

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

NCRNC, LLC d/b/a Northeast	Case No.	03-CA-252090
Center for Rehabilitation and		03-CA-254186
Brain Injury,		03-CA-255155

Employer,

and

1199 SEIU United Healthcare
Workers East,

Petitioner,

and

Tara Golden, an Individual,

Petitioner.

Place: Albany, New York (Via Zoom Videconference)

Dates: January 25, 2021

Pages: 1 through 185

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(602) 263-0885



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

In the Matter of:

NCRNC, LLC D/B/A NORTHEAST
CENTER FOR REHABILITATION AND
BRAIN INJURY,

Employer,

and

1199 SEIU UNITED HEALTHCARE
WORKERS EAST,

Petitioner,

and

TARA GOLDEN, AN INDIVIDUAL,

Petitioner.

Case No. 03-CA-252090
 03-CA-254186
 03-CA-255155

The above-entitled matter came on for hearing via Zoom
videoconference, pursuant to notice, before **IRA SANDRON**,
Administrative Law Judge, at the National Labor Relations
Board, Region 3, 11A Clinton Avenue, Albany, New York 12207, on
Monday, January 25, 2021, 10:13 a.m.



1 A P P E A R A N C E S

2 **On behalf of the General Counsel:**

3 **ALICIA PENDER, ESQ.**
4 NATIONAL LABOR RELATIONS BOARD
5 11A Clinton Avenue
6 Albany, NY 12207
7 Tel. (518)816-0909
8 Fax. (518)431-4157

9 **On behalf of the Charging Party/Ms. Golden:**

10 **LISA JOSLIN, ESQ.**
11 **NANCY WILLIAMSON, ESQ.**
12 GLEASON, DUNN, WALSH & O'SHEA
13 40 Beaver Street
14 Albany, NY 12207
15 Tel. (518)432-7511
16 Fax. (518)432-5221

17 **On behalf of the Charging Party/SEIU:**

18 **AMELIA TUMINARO, ESQ.**
19 GLADSTEIN, REIF & MEGINNISS, LLP
20 39 Broadway
21 Suite 2430
22 New York, NY 10006
23 Tel. (212)228-7727
24 Fax. (212)228-7654

25 **On behalf of the Respondent/Employer:**

26 **DAWN LANOUILLE, ESQ.**
27 HINMAN, HOWARD & KATTELL, LLP
28 700 Security Mutual Building
29 80 Exchange Street
30 80 Exchange Street, NY 13901
31 Tel. (607)231-6917
32 Fax. (607)723-6605

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Tara Golden	23	80,81 83	104	108	
Kelly Leonard	111	140	143		
Cathy Todd	146	167,169	182		

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1 P R O C E E D I N G S

2 JUDGE SANDRON: Okay. The hearing will be in order. This
3 is a formal hearing before the National Labor Relations Board
4 in NCRNC, LLC d/b/a Northeast Center for Rehabilitation and
5 Brain Injury. Lead case 3-CA-252090. The presiding judge in
6 this matter is Ira, I-R-A, Sandron, S-A-N-D-R-O-N, out of the
7 Washington Office of the Division of Judges. Will the counsels
8 please state their appearances for the record? For the General
9 Counsel?

10 MS. PENDER: Yes, Your Honor. Alicia Pender, counsel for
11 the General Counsel.

12 JUDGE SANDRON: And for the Respondent/Employer?

13 MS. LANOUEETTE: Dawn Lanouette, Hinman, Howard, & Kattell,
14 for the Respondent/Employer, Northeast Center for
15 Rehabilitation and Brain Injury.

16 JUDGE SANDRON: And for the Charging Party/SEIU?

17 MS. TUMINARO: Gladstein, Reif & Meginniss, LLP, by Amelia
18 K. Tuminaro, T-U-M-I-N-A-R-O.

19 JUDGE SANDRON: And for the Charging Party/Ms. Golden?

20 MS. JOSLIN: Lisa Joslin from Gleason, Dunn, Walsh &
21 O'Shea. And I have with me cocounsel Nancy Williamson from the
22 same firm.

23 JUDGE SANDRON: Okay. And we'll make sure that our court
24 reporter gets the spellings of the names and mailing addresses
25 for purposes of the transcript. And for the record, we have

1 assisting me today, we have Ashley, A-S-H-L-E-Y, Hammonds,
2 H-A-M-M-O-N-D-S, from the executive secretary's office, who
3 will be my courtroom deputy and assisting me in the Zoom
4 controls. And our court reporter is Thomas Baker today.

5 Now, is the General Counsel prepared to offer the formal
6 papers in this case?

7 MS. PENDER: I am, Your Honor. I offer into evidence the
8 formal papers. They have been marked for identification as
9 General Counsel's Exhibit 1(a) through 1(v) inclusive, Exhibit
10 1(v) being an index and description. The formal papers have
11 been shown to all the parties.

12 JUDGE SANDRON: Are there any objections to receipt of the
13 formal papers?

14 MS. LANOUE: No objection.

15 JUDGE SANDRON: Okay. They are received.

16 **(General Counsel Exhibit Number 1(a) through 1(v) Received into**
17 **Evidence)**

18 JUDGE SANDRON: Are there any amendments at this time to
19 the complaint or the answer?

20 MS. PENDER: Yes, Your Honor. The General Counsel at this
21 time would like to withdraw paragraph 6A of the complaint,
22 which states that about early September 2019, Respondent, by
23 Estralla Attanasio, interrogated an employee about their union
24 activities.

25 JUDGE SANDRON: And I assume there's no objection to that

1 amendment?

2 MS. LANOUEITE: No objection.

3 JUDGE SANDRON: The amendment is allowed. General
4 Counsel's Exhibit -- excuse me, the complaint, paragraph 6A, is
5 withdrawn and no longer an issue.

6 MS. PENDER: I do have one other small -- more of a
7 clarification. In paragraph 2A, Respondent admitted most of
8 the paragraph but denied the remainder of the paragraph, and I
9 don't know what there is left to deny after what was admitted.
10 So I'm wondering if Ms. Lanouette could clarify that -- that
11 for me.

12 MS. LANOUEITE: What are you referring to?

13 MS. PENDER: So paragraph 2A reads, "At all material
14 times, Respondent has been a corporation with an office and
15 place of business in Lake Katrine, New York, Respondent's
16 facility, and has been providing long-term rehabilitation and
17 brain injury care." I believe in your answer to the
18 complaint --

19 MS. LANOUEITE: My concern was that it states long term --

20 MS. PENDER: Okay.

21 JUDGE SANDRON: -- and not all individuals who come here
22 are long term.

23 MS. PENDER: Okay, okay. So the fact that it has been
24 providing rehabilitation and brain injury care is -- is not in
25 dispute?

1 MS. LANOUE: No.

2 MS. PENDER: Okay. Thank you. That -- I just wanted to
3 clarify that.

4 JUDGE SANDRON: Several preliminary matters before we
5 begin the testimonial portion of the trial. First, if at any
6 point any counsels wish to explore settlement, please let me
7 know, and I'll give you an opportunity -- we'll go off the
8 record and I'll give you that opportunity. My twin goals in
9 the course of this trial are to ensure efficient and effective
10 use of our hearing time and minimize the expense and effort for
11 the government and other parties, and at the same time provide
12 a fair hearing and full due process for all parties.

13 Efficiency without sacrificing the integrity of the proceeding.

14 A Zoom hearing poses potential technical challenges and
15 potential interference with the smooth flow of examination and
16 cross-examination of witnesses, and my ability to evaluate the
17 reliability of testimony, and compliance with my instructions
18 will help to minimize the risk of any such problems.

19 Counsels, I will emphasize certain points, of which I'm
20 sure you're aware, but I would like to reiterate them.
21 Proceedings before NLRB ALJs are formal in nature, and shall,
22 "so far as practical," be conducted in accordance with the
23 rules of evidence applicable in the United States District
24 Courts. See Section 10(b) of the Act, Section 160(b), and the
25 Board's rules, Section 102.39.

1 In this regard, the Federal Rules of Evidence, or FRE,
2 provide useful guidance but are not necessarily strictly
3 applied. See Int'l, I-N-T apostrophe L, Business Systems, 258
4 NLRB 181, 189 footnote 5, 1981, enforcement 659 F.2nd, 1069
5 Third Circuit 1983.

6 Rule 403 of the FRE provides that although relevant
7 evidence may be excluded if its probative value is
8 substantially outweighed by the danger of unfair prejudice,
9 confusion of the issues, or by considerations of undue delay,
10 waste of time, or needless presentation of cumulative evidence.

11 Finally, rule 611(a) of the Federal Rules of Evidence
12 provides that the Court should exercise reasonable control over
13 the mode and order of interrogating witnesses and presenting
14 evidence, so as to, one, make the interrogation and
15 presentation effective for the assertion of the truth; two,
16 avoid needless consumption of time; and three, protect
17 witnesses from harassment or undue embarrassment.

18 Consistent with this, Section 102.35(a) (6) of the Board
19 rules provides that I have authority "to regulate the course of
20 the hearing." Exceptions to my rulings are automatic.

21 Moreover, during the course of the trial, if counsel feels
22 that I have made an erroneous ruling, they, under Section
23 102.26 of the Board's Rules, request special permissions from
24 the Board to directly appeal my ruling.

25 I encourage stipulations of facts and of documents. And I

1 believe I said this earlier, but a stipulation to a fact or the
2 authenticity -- the authenticity of a document does not
3 necessarily mean a concession to relevance, and a caveat can be
4 so stated.

5 Opposing counsel should wait until a question is finished
6 before interposing an objection. If an objection is made to a
7 question, the attorney who asked the question should not
8 respond unless I request a response. A witness's answer should
9 not be interrupted unless it's patently clear that the answer
10 is nonresponsive, narrative, or otherwise inappropriate. Under
11 no circumstances should counsels interrupt me or engage in
12 verbal sparring.

13 I -- I believe that Ms. Golden has two attorney counsels.
14 So only one cocounsel shall conduct direct examination or
15 cross-examination and oppose objections to questions asked of
16 the particular witness by opposing counsel. But cocounsels may
17 alternate witnesses as they see fit.

18 Now this -- this -- do we have any witnesses in the
19 waiting room at this point?

20 MS. PENDER: Just Ms. Golden, Your Honor.

21 JUDGE SANDRON: Oh, okay.

22 MS. HAMMONDS: No, she's not in the waiting room, she's
23 on.

24 JUDGE SANDRON: Right.

25 MS. PENDER: Sorry, in the actual room.

1 JUDGE SANDRON: Well, I'll go ahead then. Usually I -- I
2 tell this to counsels and witnesses, but Ms. Golden is here,
3 and we don't have any other witnesses, but -- and this -- maybe
4 counsels have already emphasized to their -- their witnesses,
5 but it's important that everyone speak loudly and clearly
6 enough so that you're properly recorded. If Mr. Baker feels
7 there's any problem with what's being said as far as his being
8 able to get it down correctly, he has my authorization to
9 interject, because it's critically important that everything
10 that is said is properly recorded.

11 One person should speak at a time. The first time a name
12 is mentioned on the record, it should be spelled. We cannot
13 assume spelling. John can be J-O-H-N, it can be J-O-N, or it
14 can be J-E-A-N. Kris can be K-R-I-S, or Chris, C-H-R-I-S. If
15 counsel knows the spelling of a name and the witness doesn't,
16 counsel can provide it. And similarly, if the gender of a
17 named person is ambiguous, such as Pat or Kris, C-H-R-I-S, then
18 the gender should be set out at the outset.

19 During the course of the testimony, counsels and witnesses
20 should refer to a person by last name rather than first name,
21 unless the first name is in a quotation.

22 Okay. I think I've covered my first matters here. I
23 think we can go then to opening statements at this point.

24 Ms. Pender, do you care to make an opening statement?

25 MS. PENDER: I do, Your Honor. Although, I have two,

1 hopefully very brief, subpoena clarifications that I would just
2 like to get on the record. I don't anticipate it taking very
3 long.

4 JUDGE SANDRON: Go ahead.

5 MS. PENDER: The first one is with regard to items 3, 8,
6 16, and 21 of the General Counsel's subpoena. Item 3 requested
7 documents reflecting communications between Respondent's
8 supervisors, managers, and agents, relating to Cathy Todd from
9 January 1, 2019 to December 31st, 2019. 8 was almost
10 identical, requesting documents reflecting communications
11 between Respondent's supervisors, managers, and agents,
12 relating to Josh Endy from January 1st, 2019 to December 31st,
13 2019. 16, again, documents reflecting communications between
14 Respondent's supervisors, managers, and agents, relating to
15 Tara Golden from January 1st, 2019 to December 31st, 2019. And
16 finally, item 21 requested documents reflecting internal
17 communications between Respondent's supervisors, managers, and
18 agents, regarding the Union's organizing campaign from June 1,
19 2019 to December 31, 2019.

20 All four of these items requested documents reflecting
21 communications, which should have included text messages per
22 the first paragraph of the subpoena's definitions and
23 instructions section. I haven't received any -- any text
24 messages. I just wanted to clarify with Ms. Lanouette whether
25 there even are any.

1 MS. LANOUE: We're not aware of any -- we are not aware
2 of any text messages.

3 MS. PENDER: Okay, thank you. And then item 22 requested
4 a copy of the surveillance video referenced in the November
5 12th, 2019 meeting with Kelly Leonard, and their response was
6 that there is no surveillance video. I just want to clarify
7 whether that means there never was any, or there was at one
8 point and it no longer exists for whatever reason.

9 MS. LANOUE: We have not been able to determine if the
10 cameras here at any point in time ever actually recorded, or if
11 they simply were a running security system with video that
12 constantly overlooped. And there is no one here who has been
13 able to answer that question.

14 MS. PENDER: Okay.

15 MS. LANOUE: No video maintained from any of the
16 cameras at any time.

17 MS. PENDER: Okay. Okay. That -- that covers my -- my
18 quick subpoena issues. And we do have some joint exhibits,
19 Your Honor. I don't know if you'd rather do the witness
20 sequestration or the joint exhibits first.

21 JUDGE SANDRON: Okay. I guess we can -- there's no magic
22 in the order. I suppose we could do the sequestration first.
23 Before we go further, I -- I think, while we are in the record,
24 it's permissible for people to drink if you want water or
25 coffee or whatever, but not eat. So -- but you're welcome,

1 everybody, if -- if you want to get a liquid refresh -- have a
2 liquid refreshment with you, that's fine. And all right.

3 Why don't we take care -- I understand the General Counsel
4 from our prior discussion wished to have a sequestration order?

5 MS. PENDER: That's correct, Your Honor.

6 JUDGE SANDRON: And I -- I think we -- now Ms. Golden is a
7 party, so she -- she wouldn't be covered by the sequestration
8 order; she's allowed to stay. And I think you -- it had been
9 indicated that Ms. Massara, L-O -- and your first name is Lori,
10 L-O-R-I M-A-S-S-A-R-I -- A-R-A would be the designated
11 representative during the course of the proceeding for SEIU.

12 Is that correct, Ms. Tuminaro?

13 MS. TUMINARO: That's correct, Judge.

14 JUDGE SANDRON: Okay. Then she may stay to the -- before
15 I give the instructions, I understand the General Counsel
16 doesn't have a party or a representative you wish to have
17 present during the course of the trial who might also be a
18 witness?

19 MS. PENDER: That's correct, Your Honor.

20 JUDGE SANDRON: And I think, Ms. Lanouette, you had --

21 MS. LANOUETTE: Mr. Weir.

22 JUDGE SANDRON: -- a gentleman who was here -- there --

23 MS. LANOUETTE: Patrick Weir.

24 JUDGE SANDRON: -- he is there --

25 MS. LANOUETTE: Yes, he's here today.

1 JUDGE SANDRON: Can you spell his name for the record?

2 MS. LANOUEITE: Yes. Patrick, P-A-T-R-I-C-K, Weir,
3 W-E-I-R.

4 JUDGE SANDRON: All right. Then for all other
5 witnesses -- I don't think there's -- anybody's here. But I'll
6 just give the general sequestration rule that counsels can
7 relay to their witnesses. And that is, that cou -- witnesses
8 should not discuss at any point, while we still have the trial
9 proceeding, they should not at any point discuss their
10 testimony with other witnesses or potential witnesses or
11 discuss the testimony of other witnesses who have or will
12 testify or may testify, so that the integrity of the testimony
13 is maintained. And after -- after the trial is over, they can
14 discuss their testimony and the testimony of other witnesses
15 among themselves or anybody else. But between the course of
16 the testimony, they should have no conversations with one
17 another regarding their testimony or the testimony of others.

18 Is there -- is there anything counsels would like me to
19 add to that basic instruction?

20 MS. PENDER: Nothing for the General Counsel.

21 JUDGE SANDRON: Okay. And for other counsels?

22 MS. JOSLIN: No, Your Honor.

23 MS. TUMINARO: No, Your Honor.

24 MS. LANOUEITE: No, Your Honor. Thank you.

25 JUDGE SANDRON: Okay. So I think, then, we've taken care

1 of sequestration and subpoena issues, so I think we're ready
2 for opening statements.

3 So Ms. Pender, you can proceed, and then we'll hear from
4 other counsels.

5 MS. PENDER: We do also have some joint exhibits, Judge.

6 JUDGE SANDRON: Look -- okay. But I -- do you want to do
7 those now? I mean I -- that's fine.

8 MS. PENDER: Yeah, I'll -- I'll --

9 JUDGE SANDRON: We -- we could -- we could take care of
10 those if you want.

11 MS. PENDER: Okay, I'll do those now.

12 JUDGE SANDRON: Let's see. How do we -- I have to see how
13 we -- I guess, can we put them up on SharePoint? I don't
14 know --

15 MS. PENDER: They are on SharePoint.

16 JUDGE SANDRON: No, I mean, can we put them on the screen,
17 like --

18 MS. PENDER: Oh, on the screen? Yes.

19 JUDGE SANDRON: Yeah.

20 MS. PENDER: Yes, we can that do that. I can do that.

21 JUDGE SANDRON: If you can do that, maybe that'd be
22 easier.

23 MS. PENDER: Yeah, okay.

24 JUDGE SANDRON: Okay.

25

1 MS. PENDER: Okay. Let me do that.

2 JUDGE SANDRON: As I -- as I had indicated, this is my
3 first Zoom trial. Okay, I see.

4 MS. PENDER: I'm going to -- okay. So Joint Exhibit 1 is
5 one-page document. It is the petition in case -- the RC
6 petition in case 03-RC-250330. And so I -- I move to admit
7 Joint Exhibit 1.

8 JUDGE SANDRON: Well, do you want to wait --

9 MS. PENDER: Yeah, I'll -- I'll --

10 JUDGE SANDRON: -- all of them collectively, that might
11 be --

12 MS. PENDER: -- sure. Okay. I'm scrolling to the next
13 page, which is Joint Exhibit 2. It's also a one-page document,
14 which is the regional director's order approving the withdrawal
15 request for the petition in case 03-RC-250330. The next page
16 is Joint Exhibit 3, which is a two-page document. And this is
17 the RM petition in case 03-RM-250927. Joint Exhibit 4 is a
18 one-page document dated November 27th, 2019, which is the
19 termination letter to Joshua Endy. Joint Exhibit 5 is a one-
20 page document dated -- well, actually it's undated. It starts,
21 "Dear Cathy". It is the termination letter provided for Cathy
22 Todd. And finally, Joint Exhibit 6 is another one-page
23 document. It is a copy of the December 20th, 2019 letter
24 posted to all staff, re: wage increases, by Respondent. Those
25 are all of the joint exhibits. So at this time, I move for

1 admission of General -- or of Joint Exhibits 1 through 6.

2 JUDGE SANDRON: Do all counsels join in the -- in the
3 admission of these documents, that they're -- they're Joint
4 Exhibits?

5 Ms. Lanouette?

6 MS. LANOUEETTE: Yes, Your Honor.

7 JUDGE SANDRON: And for the Charging Party, SEIU?

8 MS. TUMINARO: Yes, Your Honor.

9 JUDGE SANDRON: And for the Charging Party, Ms. Golden?

10 MS. JOSLIN: Yes, Your Honor.

11 JUDGE SANDRON: Okay. The Joint Exhibits are received as
12 Joint Exhibits 1 through 6.

13 **(Joint Exhibit Numbers 1, 2, 3, 4, 5 and 6 Received into**
14 **Evidence)**

15 MS. PENDER: Thank you, Your Honor.

16 JUDGE SANDRON: And did you want to go ahead then now and
17 make your opening statement?

18 MS. PENDER: Yes, Your Honor. Threats, interrogation,
19 suspension, discharge. When employees at Northeast Center for
20 Rehabilitation and Brain Injury tried to exercise their Section
21 7 rights to form, join, or assist a union, that is what they
22 got. Even the perception of engaging in union activity was
23 enough to subject an employee to such treatment.

24 The evidence will show that on October 28th, 1199 SEIU
25 United Healthcare Workers East filed a petition for

1 representation of a unit of Northeast employees. The same day,
2 Respondent suspended an employee for perceived union activity.
3 Two days later, the union withdrew the petition. Respondent
4 brought the suspended employee back. But the organizing
5 campaign continued.

6 Respondent, aware that employees were still attempting to
7 organize, kicked its anti-union campaign into high gear. The
8 evidence will show that within three weeks, Respondent
9 discharged that previously suspended employee because of
10 further perceived union activity. The evidence will establish
11 that this employee is not a statutory supervisor. However, in
12 the event this Court finds her to be one, her discharge is
13 still unlawful because Respondent discharged her for refusing
14 to commit unfair labor practices on its behalf.

15 In addition, the evidence will show that Respondent
16 interrogated, threatened, suspended, and discharged a second
17 employee; threatened, suspended, and discharged a third
18 employee; and threatened and interrogated a fourth employee.

19 A month after this reign of terror, Respondent posted a
20 flier next to its time clock blaming the Union, specifically
21 the Union's filing of the charge in this very case, for its
22 failure to provide wage increases to employees.

23 Respondent's campaign to prevent its employees from freely
24 choosing whether to have union representation resulted in a
25 cascade of serious unfair labor practices. The Northern

1 District of New York has already granted temporary injunctive
2 relief relating to two of the discharged employees, as well as
3 Respondent's threats and interrogations of employees.

4 Now Respondent must be held fully responsible for its
5 actions, not only so that the discharged, threatened, and
6 interrogated employees may be made whole, but also to ensure
7 that Respondent's other employees understand that the United
8 States Government does not take the Section 7 rights lightly
9 and will hold employers responsible for infringing upon those
10 rights. Thank you.

11 JUDGE SANDRON: Okay. Thank you.

12 Ms. Tuminaro, did you wish to make an opening statement?

13 MS. TUMINARO: I would just join in the counsel for the
14 General Counsel's opening statement, Your Honor.

15 JUDGE SANDRON: And Ms. Joslin or Ms. Williamson, do you
16 wish to add anything?

17 MS. JOSLIN: Yes, Your Honor, I'd like to make a brief
18 statement myself, thank you. Ms. Golden was an exceedingly
19 hard-working and dedicated employee of the Northeast Center for
20 over five years, in Oc -- from October 2014 through November
21 2019. She was initially hired as a charge nurse for the
22 medical complex. In 2018, she was promoted to nurse manager of
23 the neurobehavioral unit, or NBI, as it will be referenced
24 here.

25 While Ms. Golden was responsible for general oversight of

1 the NBI unit, she was not a statutory -- statutory supervisor.
2 Rather, she was tasked with ensuring that the unit ran smoothly
3 and addressing any issues which arose with a patient or a
4 neighbor, as we'll call them here.

5 Despite Ms. Golden's undisputed work ethic and dedication
6 to the Northeast Center and its patients, she became a sudden
7 target of harassment and hostility in late October of 2019 when
8 the Union began an organizing campaign. Although Ms. Golden
9 had nothing to do with the Union, nothing whatsoever, she was
10 subjected to unrelenting harassment, suspended for three days,
11 ordered to conduct surveillance of employees, and ultimately
12 terminated when she refused to engage in illegal practices.

13 Initially, Ms. Golden was falsely accused of being a Union
14 leader and organizer, and of revealing to other employees some
15 confidential information which was designed to combat the Union
16 organizing committee. Ms. Golden was adamant that she was
17 neither a Union leader nor a Union organizer, yet she was
18 nevertheless suspended for three days pending a purported
19 investigation into her Union activities. She was exonerated of
20 these accusations and returned to work on October 31st.

21 On that day, the administrator at the Northeast Center,
22 Patrick Weir, specifically told Ms. Golden that she was doing a
23 great job and he was happy to have her back in her position.
24 Then, starting on October 31st, 2019, Ms. Golden was informed
25 that she was expected to engage in activities designed to

1 combat the Union's organizing efforts. Those activities
2 included passing out literature, coming to work on her personal
3 time to walk the hallways in other units to see if other
4 employees were engaging in Union activity, having dinner at a
5 local pizza restaurant to eavesdrop on employees.

6 In addition to these activities, Ms. Golden was directed
7 to report back to Northeast Center leadership and their
8 consultants regarding the employees' reactions to the
9 literature, their comments and body language, and any
10 conversations between employees. While Ms. Golden attempted to
11 comply with these directives in an effort to maintain her job,
12 after reporting a couple of conversations, she became
13 increasingly uncomfortable with what she was being asked to do.
14 So Ms. Golden made it clear that she'd no longer engage in
15 these activities. And then her employment was terminated on
16 November 19th, 2019.

17 This was less than three weeks after Mr. Weir specifically
18 told her she was doing a great job. We believe, Your Honor,
19 that the evidence will demonstrate that Ms. Golden was
20 terminated based on the employer's perception that she engaged
21 in Union activity, and/or because she refused to participate in
22 illegal activities designed to combat the Union's campaign.
23 Thank you.

24 JUDGE SANDRON: Thank you. I think then we are ready to
25 begin the testimonial phase of -- of the proceeding, if -- if

1 there's nothing else preliminarily.

2 MS. JOSLIN: Does Ms. Lanouette have an opening?

3 MS. LANOUE: I will reserve it.

4 JUDGE SANDRON: Oh, I'm sorry. I -- I was going to call
5 on you after the Charging Parties had an opportunity, so you're
6 welcome also. Or you can wait until later, it's up to you.

7 MS. LANOUEETTE: Your Honor, we'll wait until we present
8 our case.

9 JUDGE SANDRON: That is fine. Okay. Then, I -- I think
10 we're ready for testimony. Do you have your first witness, Ms.
11 Pender?

12 MS. PENDER: I do, Your Honor. The General Counsel calls
13 Tara Golden.

14 JUDGE SANDRON: Okay. Ms. Golden, if you'll please raise
15 your right hand.
16 Whereupon,

17 TARA GOLDEN

18 having been duly sworn, was called as a witness herein and was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 Q BY MS. PENDER: Good morning, Ms. Golden. I'm going
22 to ask you some questions this morning. If at any time you
23 can't understand me or hear me, please let me know; I'm happy
24 to ask my question again. If you don't understand my question,
25 please let me know; I'm happy to rephrase it. As you are

1 aware, the court reporter is recording our testimony today, so
2 you do need to give verbal answers. You can't just nod or
3 shake your head. Because there's a little bit of a lag on the
4 Zoom, I would ask that you allow me to get my full question out
5 before you answer. I'll do you the same courtesy, let you get
6 your full answer out before I ask my next question. Okay?

7 A Yes.

8 Q Ms. Golden, are you familiar with Northeast Center for
9 Rehabilitation and Brain Injury?

10 A Yes, I am.

11 Q And if I refer to it as Northeast, will you know what I
12 mean?

13 A Yes, I will.

14 Q How are you familiar with Northeast?

15 A I used to be employed by them.

16 Q When were you employed by Northeast?

17 A I started in October of 2014 and ended in November of
18 2019.

19 Q Why did your employment there end in November 2019?

20 A I was terminated.

21 Q When you worked at Northeast, what was your -- what was
22 your job?

23 A When I started at the Northeast Center, I started at as
24 the charge nurse of their MCU unit, the medically com --

25 MS. PENDER: I'm going to stop you. Hang on, Ms. Golden.

1 JUDGE SANDRON: Yeah, I think --

2 MS. PENDER: I just want to see if --

3 JUDGE SANDRON: -- we're having some technical --

4 MS. PENDER: Yeah -- if the court reporter was able to get
5 that.

6 MR. BAKER: No, I was not. It was all broken up.

7 MS. PENDER: Okay. Let's -- let me try it again and maybe
8 just speak a little slower.

9 Q BY MS. PENDER: What was your job at Northeast?

10 A When I started at the Northeast Center, I started as the
11 charge nurse for the MCU unit.

12 Q And what is the MCU unit?

13 A The medically complex unit.

14 Q And did there come a time when your position changed?

15 A Yes, I was asked to be the nurse manager of the NBI unit.

16 Q Can you say that -- the nurse manager of?

17 A The nurse manager of NBI, neurobehavioral unit.

18 Q And how long did you hold that position?

19 A I started that position in August of 2018 until November
20 of 2019.

21 Q And does the NBI unit differ from other units at
22 Northeast?

23 A Yes. The NBI unit is a 20-bed behavioral lockdown unit.
24 It has the -- so those residents are a little bit more -- they
25 don't leave the unit, so their disciplines come to the unit.

1 So there's --

2 Q What do you mean by their disciplines come to the unit?

3 A So the services for those neighbors come to the unit to
4 serve those neighbors. The recreations program, The --

5 Q Can you slow down, Ms. --

6 A The --

7 Q -- just slow down a little bit?

8 A The recreations department, the program specialist or --
9 or staff ed department, the CSS workers, the community support
10 specialists, and nursing.

11 JUDGE SANDRON: Or -- maybe you can just go back for a
12 minute. Who works in the NBI unit? You know, so who --

13 THE WITNESS: They all do, Your Honor.

14 JUDGE SANDRON: Oh. When you say all, you're talking
15 about all who?

16 THE WITNESS: All four of those disciplines --
17 departments.

18 JUDGE SANDRON: Now did the -- did the -- do all those
19 disciplines also work in the MC unit -- MCU unit too?

20 THE WITNESS: They do, but they don't -- so the -- the --
21 the employees that work on NBI specifically work on NBI and
22 they don't really go anywhere else in the building that day.
23 Does that make sense? I do -- I don't know how -- if Todd will
24 explain this better. So --

25 JUDGE SANDRON: Yeah. What's that --

1 THE WITNESS: It just means --

2 JUDGE SANDRON: Yeah, I'll tell you what. I think --

3 THE WITNESS: It just --

4 JUDGE SANDRON: -- it might be helpful -- you know, I know
5 it's a little hard sometimes to explain structures. It might
6 be helpful, before we -- you know, at some point, to get an
7 order -- a chart or an organizational schemata (sic) that would
8 show us, you know, departments and classifications.

9 MS. PENDER: We attempted to get an org chart, Your Honor.
10 It just isn't visi -- it isn't readable enough to have everyone
11 see it. But I do plan to have Mr. Weir testify regarding the
12 organization.

13 JUDGE SANDRON: All right. I think that would be helpful.
14 And -- and of course, the parties if -- if you can agree on --
15 on something less formal than a -- formal organization chart,
16 if -- if you can agree to, like, a simplified drawing of -- of
17 the chart, that would be fine also. You know, that would just
18 give us an idea up front because I think we're probably going
19 to have a lot of testimony before Mr. Weir testifies a -- about
20 the various -- maybe departments' classifications. And it --
21 and it might be helpful to have that in a context early rather
22 than have it after the -- we have to figure out, you know,
23 certain testimony, you know, how it relates to other testimony.
24 So maybe the -- maybe the parties can consult and just see if
25 there's a way you could -- and -- and it could be even

1 handwrit --

2 MS. PENDER: Um-hum.

3 JUDGE SANDRON: -- a handmade chart and it doesn't have to
4 be super formal. That would just give us a context if -- at
5 some point early on in the trial.

6 MS. PENDER: Okay. We can --

7 JUDGE SANDRON: Okay?

8 MS. PENDER: We can work on that, Your Honor.

9 JUDGE SANDRON: Yeah, I think that would be helpful.

10 MS. PENDER: Okay.

11 JUDGE SANDRON: For those of --

12 MS. PENDER: Ms. Golden --

13 JUDGE SANDRON: Sorry. For those of us who are not
14 familiar with the structure. I know all of you are fairly
15 familiar with it. But for those of us and for anybody who's
16 not, it would be very helpful.

17 MS. PENDER: Okay.

18 Q BY MS. PENDER: Ms. Golden, how, if at all, is the nurse
19 manager of the NBI position different from other unit manager
20 positions?

21 A Other than we oversee multiple disciplines on the unit,
22 it's not really. I don't think so.

23 Q As a nurse manager of NBI, what was your schedule?

24 A I worked four 10-hour shifts, Monday, Wednesday, Thursday,
25 and Friday.

1 Q And what was your rate of pay?

2 A \$33.50 an hour at s --

3 Q Can you repeat that?

4 A \$33.50 -- hour at salary.

5 MS. PENDER: Mr. Baker, is that coming through okay?

6 MR. BAKER: It -- she --

7 JUDGE SANDRON: Oh, yes. You're on mute.

8 MR. BAKER: She -- sorry. She -- she's breaking up a
9 little bit, but I could -- I could understand the answer. I
10 don't know if maybe she has low bandwidth in her area or
11 something. But --

12 MS. PENDER: Yeah, I think -- I think there's some
13 internet connectivity issues.

14 MR. BAKER: Yeah, I'm -- I'm -- I'm having some issues on
15 my end too. So I'm going to be turning off my camera just so
16 everybody knows.

17 JUDGE SANDRON: All right.

18 MS. PENDER: Okay. All right. If -- if at any time
19 something doesn't come through, would -- just make -- just
20 speak up and let me know.

21 MR. BAKER: Absolutely.

22 MS. PENDER: Thank --

23 MR. BAKER: I have no problem doing that.

24 MS. PENDER: Thank you so much.

25 Q BY MS. PENDER: Can you describe for me, Ms. Golden, your

1 job duties as NBI unit manager?

2 A As the unit manager on NBI, for the mo -- I kept the day-
3 to-day dealings going smoothly. I made sure that paperwork was
4 in order; that people's care plans were in order. I attended
5 meetings. If staff had questions on the unit, I would be the
6 one to go and get those answers and bring back the answers to
7 them. I -- I just kind of made the day-to-day process run
8 smoothly.

9 JUDGE SANDRON: Wh -- when you said you attended meetings,
10 what -- what kind of meetings did you attend?

11 THE WITNESS: Well, every morning, Monday through Friday,
12 at 8:30 in the morning, we attended morning report where all
13 n -- unit managers and department heads would attend. I also
14 attended a nurse manager meeting every Friday at 12:30. I
15 attended a Falls Meeting every Friday at 9:00 in the morning.
16 And I attended a behavioral meeting at 1:00 in the afternoon on
17 Fridays.

18 JUDGE SANDRON: You said a Falls Meeting, you called it?

19 THE WITNESS: Yes.

20 JUDGE SANDRON: All right. And what kind of meeting was
21 that?

22 THE WITNESS: So when somebody falls down, we have to
23 document paperwork for it. Do -- this was to make sure that
24 the documentation for those falls was in order. Just in case
25 somebody got hurt or didn't get hurt, any time somebody fell

1 down.

2 JUDGE SANDRON: And -- and what about the behavioral
3 meetings? What -- what were they about?

4 THE WITNESS: I worked on the -- so NBI was a behavioral
5 unit -- so I attended behavioral meetings because I had
6 behaviors almost on a daily basis.

7 Q BY MS. PENDER: Can you -- say --

8 A I -- talk about them.

9 Q -- describe what the behaviors are?

10 A Behaviors would be anything from throwing things to verbal
11 aggression to physical aggression. It -- I mean, behaviors.

12 Q Okay.

13 A Destroying of property.

14 JUDGE SANDRON: And were all these meetings that you've
15 referenced -- were they with people like unit managers and
16 department heads? Or -- or did other employees attend them?

17 THE WITNESS: The Falls Meeting was unit managers only.

18 The unit manager meeting was unit managers and the
19 scheduler. And the behavioral meetings were -- there was a
20 mixture of people at the behavioral meetings.

21 JUDGE SANDRON: I see. And -- and who -- who -- wh --
22 when you said that you -- you attended meetings with all unit
23 managers and department heads; who -- who ran those meetings
24 normally?

25 THE WITNESS: The director of nursing and the

1 administrator ran morning report.

2 JUDGE SANDRON: Thank you.

3 Q BY MS. PENDER: Ms. Golden, who was responsible for making
4 the schedules for employees working on the NBI unit on a given
5 day?

6 A The -- it would depend on the department they were in. So
7 for nursing, there was a scheduler that handled nursing and CNA
8 schedules. I'm not quite sure who did the schedules for the
9 CSS department, the activities department, or the program
10 specialist department.

11 Q Did you do schedules for any employees?

12 A No, I did not.

13 JUDGE SANDRON: Did you have any input in schedules or
14 schedule changes or requests of -- of employees?

15 THE WITNESS: No, I did not.

16 JUDGE SANDRON: I -- in terms of, like, time off or sick
17 leave or whatever, you -- did you have any role in those?

18 THE WITNESS: No, I did not.

19 Q BY MS. PENDER: And who assigned the daily tasks to
20 employees who came to the NBI unit on a given day?

21 A It would depend on the disciplines. So the CSS -- CSS,
22 program specialists, and activities, they all had their own
23 supervisors. So their own supervisors would tell them what to
24 do. And then the supervisor for nursing would tell nursing and
25 the aides what to do.

1 JUDGE SANDRON: So -- so if you had an issue with somebody
2 that was in the NBI, what did you do if -- if there was a
3 problem with an employee that you saw in your role? What --
4 what -- what was your responsibility?

5 THE WITNESS: I would go to the nursing supervisor and get
6 directions from her or him, whoever was the nursing supervisor.

7 Q BY MS. PENDER: Ms. Golden, you -- you talked about
8 meetings. Are there any other type of meetings at Northeast
9 that you haven't already talked about?

10 A Yes. There were consultant meetings, when the consultants
11 and -- and Upstate Services came in to the building on October
12 28th, 2019.

13 Q First, I want to ask you, what is Upstate Services?

14 A The -- it's the corporate that owns the building, is my
15 understanding.

16 Q And what consultants are you -- were you referencing?

17 A They were these people that were hired to direct us on the
18 Union that was attempting to come in to the facility.

19 Q And when did you attend your first meeting with those --
20 those people?

21 A On October 28th, 2019.

22 Q Can you walk me through that day -- what happened during
23 that entire day of October 28th of 2019?

24 A So on October 28th, 2019, at morning report, Patrick Weir,
25 the administrator, in the administrative conference room told

1 us to not kill the messenger, that crit (audio interference)
2 was coming in and they were mad because the Union filed
3 something to get into the building.

4 Q And then --

5 A We were then --

6 JUDGE SANDRON: All right.

7 A We were then --

8 JUDGE SANDRON: Okay.

9 A -- released.

10 MS. PENDER: All right.

11 JUDGE SANDRON: I'm sorry.

12 MS. PENDER: Sorry. Hang on a second.

13 JUDGE SANDRON: Yeah -- yeah, I -- I think we need a
14 foundation, you know, if you're going to meetings and
15 discussions, you -- you need to have a foundation of where they
16 occurred and who was present and what time of day for the
17 record.

18 Q BY MS. PENDER: So what -- what -- what meeting was this?

19 A This was at -- this was at morning report.

20 Q And where is morning report held?

21 A In the administrative conference room.

22 Q And who attends morning report?

23 A All of the nurse managers, all of the part -- department
24 heads, and I believe one of the business or admissions girls
25 that tells us what the census is for the building.

1 JUDGE SANDRON: Are -- are they always held at the same
2 time? Those meetings?

3 THE WITNESS: Yes. 8:30 in the morning until about
4 9:30 -- or until about 9:00 in the morning.

5 JUDGE SANDRON: Okay.

6 THE WITNESS: They're -- it's about a half an hour long.

7 JUDGE SANDRON: And -- and do the same people normally
8 attend the --

9 THE WITNESS: Yes.

10 JUDGE SANDRON: And about to -- the total number of unit
11 managers and a re -- well, actually -- well, the total number
12 of people who were there normally was -- was what? You know,
13 the number. As best as you can --

14 THE WITNESS: I would guess probably around 15. I -- I
15 could be missing some folks.

16 JUDGE SANDRON: Okay. And did you remember anything else
17 that was said at that meeting, either by Mr. Weir or anybody
18 else who was there?

19 THE WITNESS: No. Just that Upstate Services was coming
20 in and they were mad. And then they released us to go back to
21 our units around --

22 Q BY MS. PENDER: Around what time?

23 A Around 9 a.m.

24 Q And what happened next on that day?

25 A Around 10 a.m., I was called back down to -- to the

1 administrative conference room, my very first individualized
2 meeting.

3 Q Was there another meeting before that?

4 A Just the morning report.

5 Q Okay. And what's -- what was -- what was the next meeting
6 after morning report?

7 A That was the meeting at around 10:00 that I was called
8 back down to the administer (audio interference) for an
9 individualized meeting.

10 JUDGE SANDRON: And -- who -- do you remember who
11 called -- how you were notified to go there -- how you were
12 informed to be there?

13 THE WITNESS: I don't, to be honest with you. I just
14 remember getting a phone call. I -- and going downstairs.
15 I -- I don't remember who called me down.

16 Q BY MS. PENDER: Ms. Golden, was there another meeting
17 between morning report and your individual meeting later that
18 day?

19 A Not that I'm aware of, no.

20 Q There wa -- there wasn't another meeting where the --
21 the -- the consultants were present?

22 MS. LANOUE: Objection. Objection, the witness has
23 answered. Leading.

24 JUDGE SANDRON: I'll let this stand.

25 A I -- I did state that --

1 JUDGE SANDRON: All right. We're --

2 A -- I got called back down at around 10:00 in the morning.

3 JUDGE SANDRON: All right. Wait a second, I ten -- I
4 think, you know, you -- Counsel can re -- frier -- refresh her
5 recollection. So go ahead if you want to try to refresh her.

6 Q BY MS. PENDER: Prior to your individual meeting, had you
7 met the consultants?

8 A No. That was my individual meeting, meeting the
9 consultants at 10:00 in the morning.

10 Q Okay. And -- and who was present for that meeting?

11 A Dave C. -- I don't remember his last name.

12 Q Could it have been Cam -- Camerota, his last name?

13 A It is possible, yes. I -- I just know that it's C.

14 JUDGE SANDRON: All right. Oh, we can ask Ms. Lanouette.
15 Is there any question about the identity of the person? I
16 mean, his name, as far as the name?

17 MS. LANOUEETTE: I have many questions. But no, Camerota
18 is C-A-M-E-R-O-T-A. I'm not admitting there was such a meeting
19 but I believe that's who --

20 JUDGE SANDRON: All right.

21 MS. LANOUEETTE: Ms. Golden is referring to.

22 JUDGE SANDRON: All right. Thank you. That is helpful.

23 Q BY MS. PENDER: And who else was present at that meeting,
24 Ms. Golden?

25 A Four of the consultants that had just come in. Oh, my

1 gosh. So --

2 JUDGE SANDRON: Remember --

3 A I -- I understand what you're saying now. I -- I
4 attended -- so the 10:00 meeting was not an individualized
5 meeting. The 10:00 meeting was the meeting that everyone was
6 called back down to.

7 Q BY MS. PENDER: All right. So get -- to -- tell me about
8 that 10:00 meeting. Where was it held?

9 JUDGE SANDRON: Wait -- we --

10 A It was held in the administrative conference room.

11 JUDGE SANDRON: Are you -- you're talking about another
12 group meeting?

13 A Yes, I -- I completely forgot about the group meeting
14 before my individual me -- there was a group meeting before my
15 individual meeting.

16 JUDGE SANDRON: Okay. You want to lay the foundation for
17 that --

18 MS. PENDER: Yes.

19 JUDGE SANDRON: -- Ms. Pender?

20 MS. PENDER: Yes, Your Honor.

21 Q BY MS. PENDER: What time was that group meeting held?

22 A That was the meeting that was called in at 10:00 in the
23 morning. Right --

24 Q And where was that held?

25 A In the administrative conference room.

1 Q And who attended that meeting?

2 A Again, all department and nurse managers. I do believe
3 there was extra people at that meeting -- extra business office
4 people at that meeting.

5 Q Who else was there?

6 A Dave C. and four consultants who were not introduced to us
7 at the time. It was just these four individual people. They
8 were two females and two males.

9 Q Was -- and -- and who was Dave C.?

10 A Dave C., I was under the impression, was corporate --
11 Upstate Management. I -- this was my first time meeting him.

12 Q And about how long did that meeting last?

13 A That meeting lasted about an hour and a half to an hour
14 and fi --

15 Q Can you repeat that?

16 A It lasted about an hour and a half to an hour-and-45
17 minutes.

18 JUDGE SANDRON: Okay.

19 Q BY MS. PENDER: And about how many people, total, were --
20 were at that meeting?

21 A The room was filled more for that meeting, so I would
22 guess 20 or more people.

23 JUDGE SANDRON: And -- and all -- one question, did --
24 did -- Mr. C. -- did he actually identify himself at the
25 meeting -- at -- at these meetings? Did he actually himself

1 who he was?

2 THE WITNESS: I don't remember, Your Honor.

3 JUDGE SANDRON: All right. It's whatever you recall. Go
4 ahead.

5 MS. PENDER: Okay.

6 Q BY MS. PENDER: What happened in -- in the 10:00 meeting,
7 Ms. Golden?

8 A So the first thing that Dave did, that I remember, is he
9 dismissed Marcos DeAbreau, the director of CSS. And --

10 MS. PENDER: And I believe the spelling on that
11 M-A-R-C-O-S D-E-A-B-R-E-U.

12 JUDGE SANDRON: Thank you.

13 THE WITNESS: And he dismissed John Walter, the director
14 of environmental services.

15 JUDGE SANDRON: Can you spell that also?

16 MS. PENDER: J-O-H-N W-A-L-T-E-R-S (sic).

17 JUDGE SANDRON: You say he --

18 MS. LANOUILLE: Your Honor, there's a correction. Mr.
19 DeAbreau's name is D-E-A-B-R-E-A-U.

20 MS. PENDER: All right. Thank you.

21 JUDGE SANDRON: Very good. Thank you. When you say he
22 dismissed them, wh -- what -- what do you mean?

23 THE WITNESS: He told -- he told them they did not need to
24 be at that meeting.

25 JUDGE SANDRON: Oh. Oh I see. So he dismissed them from

1 being present?

2 THE WITNESS: Yes.

3 Q BY MS. PENDER: And what happened after that?

4 A Once he dismissed them, and they left the room, he stated
5 to the room that the -- that the corporation was prepared to
6 fire all 46 CSS workers that day. That they had heard that --
7 was the ones bringing in the Union. He then, blamed us
8 managers and department heads for the staff being so unhappy
9 that they were bringing in the Union. And he told us that he
10 knew people in that room were working for the Union and he was
11 going to find out and terminate them. He then asked for each
12 person in the room to state who they were, where they worked,
13 and what they had heard either about staff being unhappy or
14 staff being for the Union.

15 Q And did you say anything during that meeting?

16 A When it was my turn to speak, I stated that my name was
17 Tara Golden, that I was the nurse manager of NBI, and that the
18 only thing that I could think of was that the CSS workers were
19 upset because the day-time CSS workers got paid more than the
20 evening shift and the overnight shift for doing the same exact
21 job.

22 Q And did anybody respond when you said that?

23 A No.

24 Q How long did that meeting -- you already said how long
25 meeting lasted. After that meeting ended, what did you do?

1 A I went back to my office to do some work.

2 JUDGE SANDRON: Okay. So one other thing. Do you
3 remember anything else that Mr. C. or any of the consultants --
4 the people you believe were consultants -- anything else that
5 he or they said at the meeting?

6 THE WITNESS: In that -- in that meeting, no. I just
7 focused on -- Dave was very upset, that he felt that we were at
8 blame for the Union filing something and that the staff were
9 up -- upset and we -- doing about it, so we must have been out
10 of touch with our staff.

11 Q BY MS. PENDER: Any -- did anything else happen on -- on
12 October 28th of 2019 after that meeting?

13 A Yes. About a half an hour after that meeting, that's when
14 I was called down for my first individualized meeting.

15 Q And where was your individual meeting held?

16 A In the administrative conference room.

17 Q And about what time of day was that?

18 A It was still during the day. I'm not quite sure the
19 actual time of day. But it was probably early afternoon, I'd
20 say.

21 Q And who --

22 JUDGE SANDRON: A -- a -- after lunch? You think it was
23 after lunchtime?

24 THE WITNESS: I -- I mean, yeah. Our lunches are a little
25 different in facilities. So I guess you could say that because

1 lunch starts at 11:00 in the morning. So yeah, after lunch.

2 JUDGE SANDRON: All right.

3 Q BY MS. PENDER: Who -- who was present at that meeting?

4 A Dave C. and the four consultants. I believe one's name
5 was Keith (phonetic throughout). One of the females was named
6 Aubrey I don't recall the other female's name. She was only
7 present for that day and I didn't see her again. And then
8 there was either Mike (phonetic throughout) or Mondo (phonetic
9 throughout). I don't remember which one came in that day. But
10 eventually both Mike and Mondo were there.

11 JUDGE SANDRON: What was there -- that -- Audrey? Did you
12 say? What was her name?

13 THE WITNESS: Aubrey.

14 JUDGE SANDRON: Can you spell that because I want to make
15 sure we have it.

16 THE WITNESS: Yeah. It's A-U-B-R-E-Y.

17 JUDGE SANDRON: Thank you.

18 MS. PENDER: Is that any --

19 JUDGE SANDRON: You can continue.

20 MS. PENDER: -- anyone else present --

21 JUDGE SANDRON: Go ahead.

22 MS. PENDER: Sorry.

23 Q BY MS. PENDER: Anyone else present to your recollection?

24 A No.

25 Q And what happened in that meeting?

1 A Dave accused me of sending out a mass text message to the
2 CSS workers informing them that they all might be terminated
3 pending the Union investigation.

4 JUDGE SANDRON: Can you be as specific as you can as to
5 what he said? You know, you said he accused you, but can you
6 be more specific as to, you know, what he's actually said --
7 the words he use?

8 MS. GOLDEN: He said that I sent a text message out to the
9 CSS workers telling them about being terminated pending Union
10 activity.

11 JUDGE SANDRON: Did you respond to him?

12 Q BY MS. PENDER: Did you resp --

13 JUDGE SANDRON: Go ahead.

14 Q BY MS. PENDER: Did you respond to that?

15 JUDGE SANDRON: That -- that's the problem with Zoom --
16 it -- it -- it's sometimes difficult not to overlap.

17 A I did. I asked him if I blay -- then he pulled my phone
18 out in the middle of --

19 MS. PENDER: All right. I'm going to stop you.

20 JUDGE SANDRON: Yeah.

21 Q BY MS. PENDER: I'm going to -- can you just slow down a
22 little bit and s -- and --

23 A Okay.

24 Q -- say that again?

25 A I -- I did respond. I asked him if I had blatantly taken

1 out my phone and text the CSS workers in that meeting. He
2 stated that he didn't know how I sent the text message. Then
3 Keith spoke up and told me that if he was me (sic), he would
4 try everything he can to find out who put my name in that text
5 message. And I told him that I didn't care who did it because
6 I didn't send a text message out to anybody. And that's where
7 Dave C. slammed his hand on the ta -- that I'm --

8 MS. PENDER: Hold that. Hang on, Ms. Golden. Just --

9 JUDGE SANDRON: Yeah, we're having some problems in -- in
10 the connection. So --

11 MS. LANOUE: I have turned everything off in my house,
12 I'm sorry.

13 JUDGE SANDRON: That's all right. We'll do the best we
14 can with the technical issues. You want to --

15 MS. PENDER: Okay.

16 JUDGE SANDRON: Want to repeat that, just -- again?

17 THE WITNESS: From my response?

18 MS. PENDER: Yes.

19 THE WITNESS: So I responded to Dave C. by asking him if I
20 had blatantly pulled my phone out in the middle of the meeting
21 and sent the text message. He stated that he didn't know how I
22 did it. Then Keith spoke up and stated that if he were me, he
23 would do everything in his power to find out who put my name in
24 the text message, where I responded to I didn't care who put my
25 name in the text message because I didn't send the message.

1 Dave then slammed his hand down on the table in front of me and
2 stated that I had to prove to him that I -- working with the
3 Union.

4 Q BY MS. PENDER: Prove to him what?

5 A That I was not working with the Union.

6 Q And did you respond to that?

7 A I did. I asked how to do that -- how I could do that.
8 The only way I could do that was to tell them that I'm not
9 involved with the Union. I have never been contacted by anyone
10 with the Union, and I have never contacted anyone for the
11 Union. And I offered to show them my phone so that -- to prove
12 that I did not send any text message out to anyone.

13 Q Did they take you up on that?

14 A No.

15 Q Do you recall anything else from that meeting?

16 A I was told that I lied --

17 Q Hang on. You were told -- you were told -- who told you
18 what you're about to say?

19 A Dave C. told me that I lied to them because I didn't tell
20 them that I was dating somebody else in the facility. And I
21 told him that I didn't know I had to tell them that I was
22 dating someone, that we had been together for five years and
23 everybody knew about it.

24 JUDGE SANDRON: Did they mention who -- did they mention
25 the name of who you were dating?

1 THE WITNESS: No.

2 Q BY MS. PENDER: Anything else in that meeting?

3 A I -- I don't -- I -- I don't -- I don't think so. I think
4 that was pretty much the gist of it. That I was sending a text
5 message out and that I needed to prove --

6 JUDGE SANDRON: Are you --

7 A -- to them that I was not working with --

8 JUDGE SANDRON: Excuse me. You don't need to repeat what
9 you've said.

10 THE WITNESS: Okay.

11 JUDGE SANDRON: Yeah, it's just, you know, anything
12 additional.

13 Q BY MS. PENDER: Ms. Golden, how long did that meeting
14 last?

15 A About a half an hour to 45 minutes.

16 Q And after the meeting, what, if anything, did -- did you
17 do?

18 A I went to my director of nursing's office -- Kathy
19 McCormick's office and I --

20 JUDGE SANDRON: Oh wait. Can you just spell her name?

21 MS. PENDER: Yes. It's K-A-T-H-Y M-C-C-O-R-M-I-C-K.

22 JUDGE SANDRON: I know, you know, some of these names
23 would be in -- in the complaint, but it's better to have it
24 on -- on the record, you know, for someone reading the
25 transcript.

1 MS. PENDER: Right.

2 Q BY MS. PENDER: And what happened next, Ms. Golden?

3 A I went to Kathy McCormick's office -- McCormick. The
4 ADON, Jennifer Candee, and the scheduler at the time, Kimberly
5 Bennett, were in the office with Kathy. They asked me why --

6 JUDGE SANDRON: All right. Can you -- can you spell those
7 names, Ms. Pender or Ms. Golden?

8 MS. PENDER: I believe -- Jennifer Candee, I believe
9 J-E-N-N-I-F-E-R. And I think it's C-A-N-D-E-E. Is that right,
10 Ms. Golden?

11 THE WITNESS: Yes.

12 MS. PENDER: Okay. And then, Kimberly Bennett,

13 K-I-M-B-E-R-L-E-Y B-E-N-N-E-T-T. I could be --

14 THE WITNESS: Yes.

15 MS. PENDER: -- wrong on the number of T's.

16 JUDGE SANDRON: Okay. Ms. Len -- Lanouette, if you have
17 any, you know, contrary information on any names, you know, you
18 can say it. You -- you might have the best knowledge of
19 spelling.

20 Q BY MS. PENDER: Okay. What -- what happened next, Ms.
21 Golden?

22 A I was asked why I look upset? And I informed --

23 Q Who asked you that?

24 A I believe it was Kim. I in --

25 Q Kimberly Bennett?

1 A Yes. I informed them I had just been downstairs in a
2 meeting with corporate and the consultants and they accused me
3 of un -- union organizing and union leading. And I stated that
4 I (audio interference) to do because I wasn't union organizing
5 or union leading. And Kathy just looked at me and said it's
6 going to get ugly and then she turned to her computer.

7 JUDGE SANDRON: Yeah, I think we're going to have to
8 repeat this.

9 MS. PENDER: Yeah.

10 JUDGE SANDRON: We're getting -- it's getting choppy. We
11 don't want to get, you know, a wrong answer, so to speak, on --
12 or incorrect response recorded because of the technical issues.

13 MS. LANOUE: Right.

14 MS. PENDER: Can you --

15 THE WITNESS: Did they tell me to talk louder?

16 Okay. So I -- I was asked why I looked upset. I
17 responded with that I had been called down to a meeting in the
18 administrative conference room. And they accused me of sending
19 a text message out to CSS and union organizing and union
20 leading. And I stated that I didn't do it, so I didn't un --
21 I -- I didn't know what to do. And Kathy just looked at me,
22 told me it was going to get ugly, and then went back to her
23 computer. I just stood there for a few more minutes and then
24 left her office.

25 JUDGE SANDRON: Did we get the last part?

1 Q BY MS. PENDER: You looked at her for a few minutes and
2 then?

3 A I -- I -- I left and went back to my office.

4 Q What, if anything, else happened on that day -- on October
5 28th?

6 A At around 5:15 in the afternoon, I was called back
7 downstairs to Patrick Weir's office.

8 Q Who called you down to Patrick's office?

9 A Kathy McCormick.

10 Q And did you go?

11 A I did, yes.

12 Q And where is Mr. Weir's office located?

13 A It's a -- it's in the administrative conference suite. So
14 where all the offices are, including the administrative
15 conference room.

16 Q And when you went down to Mr. Weir's office, who was
17 present?

18 A Patrick Weir, Kathy McCormick, and Mary Pat. I don't know
19 her last name.

20 MS. PENDER: I believe that -- I believe the last name is
21 Carhart as -- as admitted in the complaint. C-A-R-H-A-R-T.

22 Q BY MS. PENDER: And do you know who Mary Pat Carhart is?
23 Did you know at the time who she was?

24 A My understanding was that she was the director of
25 nursing's boss.

1 Q Had you ever met her before?

2 A No.

3 Q And what happened in that meeting?

4 A Patrick Weir told me I was being suspended pending an
5 investigation for unionizing and sending the text message out
6 to CSS.

7 JUDGE SANDRON: Wh -- wh -- what was --

8 MS. PENDER: And did --

9 JUDGE SANDRON: What was the first thing he said? I --
10 it's a little hard. You said you were being suspended for
11 what? Could you just repeat the first part?

12 THE WITNESS: For sending the text message to the CSS
13 workers and for union organizing and leading.

14 Q BY MS. PENDER: And did you respond to that?

15 A I asked him how he could do this. I asked him if it was
16 legal. And I asked him if I could have something in writing.

17 Q Did he respond at all?

18 A He told me that it was just an investigation; that yes, it
19 was legal; and no, I did not need anything in writing.

20 Q And what else happened?

21 A Kathy McCormick walked me out the back gate and took my
22 badge and told me that she would hang onto this for me for when
23 I returned.

24 Q Wh -- what kind of badge?

25 A It's our ID badge which gets us in and out of -- because

1 it's a locked facility.

2 JUDGE SANDRON: Were you told how long you were going to
3 be suspended?

4 MS. GOLDEN: No.

5 Q BY MS. PENDER: And after that meeting, what, if anything,
6 did you do?

7 A I went home and waited for a call.

8 Q Did -- did anyone eventually contact you?

9 A On --

10 Q Or at least --

11 A -- October 30th, 2019, Kathy McCormick called me and told
12 me that I was not losing --

13 Q She what --

14 A And that I --

15 Q Say again what she told you.

16 A She told me I was not losing my job and that I needed to
17 come in the next day on October 31st, 2019 at 10 in the morning
18 to meet (audio interference) Weir.

19 JUDGE SANDRON: To what? What was the last part? To --

20 MS. GOLDEN: To meet with Patrick Weir.

21 JUDGE SANDRON: And --

22 Q BY MS. PENDER: And -- and -- and did you go in as -- as
23 directed?

24 A Yes. I went to the -- went through the main entrance and
25 waited at reception for Julie Cole. You want to spell that?

1 MS. PENDER: Yeah, it's J-U-L-I-E C-O-L-E. And who --

2 THE WITNESS: The --

3 Q BY MS. PENDER: -- who -- who is Julie Cole?

4 A The administrative secretary. She brought me back to the
5 administrative suite, where Patrick Weir's office is.

6 Q And the --

7 A Where I --

8 Q -- what time of day was that?

9 A 10 in the morning.

10 Q Great. And when you went back to Patrick's office, who
11 all was present there?

12 A Patrick Weir and I were the only two in his office for
13 that meeting.

14 Q And how long did that meeting last?

15 A About 20 to 30 minutes.

16 Q And what happened in that meeting?

17 A Patrick slid my badge across the desk towards me, and I
18 asked him if I could have this back. Where he told me, yes,
19 please take it back; that he was very happy that I had come
20 back to the Northeast Center -- that I didn't quit. He told me
21 that they had to do this investigation, and that's what they
22 do. My understanding of they --

23 JUDGE SANDRON: All right.

24 MS. GOLDEN: -- was that --

25 JUDGE SANDRON: All right. That -- just a second.

1 Don't -- don't, you know, add. Just -- just -- just tell us
2 what was said --

3 THE WITNESS: Okay. Sorry.

4 JUDGE SANDRON: --at this point. That's okay. Ju --
5 ju -- just, you know, just to let you know that -- you know,
6 what you -- how you testify is -- is a little different than
7 your normal conversational styles. So there's a certain way
8 that evidence comes in.

9 THE WITNESS: Okay.

10 Q BY MS. PENDER: What -- what else was said during --
11 during this meeting?

12 A That he was glad that I came back to the Northeast Center.

13 Q Who was glad?

14 A That I --

15 Q Who was glad?

16 A Pat -- Patrick was glad.

17 Q Okay.

18 A That I was doing wonderful things on NBI and he was just
19 glad that I didn't quit and that I came back. And he was
20 happy, and I was doing wonderful things.

21 Q When -- when Mr. Weir was saying that the investigation
22 was what they do? Who did you understand him to be talking
23 about?

24 MS. LANOUE: Objection. Spec --

25 JUDGE SANDRON: Yeah. I -- I -- I -- oh, that calls for

1 speculation.

2 MS. PENDER: Okay.

3 JUDGE SANDRON: Sustained.

4 Q BY MS. PENDER: After that meeting, what, if anything,
5 did --

6 MS. PENDER: Oh, go ahead.

7 JUDGE SANDRON: Oh, I just wanted to ask you, did -- did
8 you get -- you -- you were out for, what? A -- a -- a short
9 time. Did you get paid for the time that you were on
10 suspension?

11 THE WITNESS: I believe so, yes.

12 Q BY MS. PENDER: And after you met with -- with Mr. Weir on
13 the morning of the 31st, what, if anything, did you do?

14 A On the morning of the 31st? Oh, I --

15 Q Yeah. After your meeting.

16 A After my meeting? It was Halloween, so I changed into my
17 costume so that I could move forward with my work life and life
18 as usual. I was trying to put it behind me. So I dressed up
19 in my costume and I carried on about my day.

20 JUDGE SANDRON: Was that -- wa -- was everybo -- would
21 ge -- was that encouraged at work? To put on these Halloween
22 outfits?

23 THE WITNESS: Yes, Your Honor. I -- we worked for a --
24 this was people's homes, so we attempted to make it feel as
25 normal as possible. And Halloween is a very big deal for

1 people.

2 MS. PENDER: Right.

3 Q BY MS. PENDER: Ms. Golden, after returning to work on
4 October 31st of 2019, did you ever attend any further meetings
5 with the -- with the consultants?

6 A Yes. There was an -- I found out that we had to attend an
7 afternoon meeting. That was my first meeting -- afternoon
8 meeting with them -- that afternoon. I had missed the first
9 meeting being that I didn't come in until 10. Nobody really
10 talked to me. Mike and Mondo commented on my --

11 JUDGE SANDRON: All right. Before I --

12 A -- costume.

13 MS. PENDER: Well, hang on, Miss --

14 JUDGE SANDRON: Yeah, I think we're --

15 MS. PENDER: -- hang on, Ms. Golden.

16 JUDGE SANDRON: That was the same day you came back?

17 THE WITNESS: Yes.

18 JUDGE SANDRON: Okay. Why don't you lay the foundation?

19 MS. PENDER: Okay.

20 Q BY MS. PENDER: So a -- on the day you came back, was
21 there a meeting with the consultants?

22 A Yes.

23 Q And about what time of day was that?

24 A It was in the afternoon. They usually were about, between
25 3 and 4:00, whenever we got called down.

- 1 Q And where did the meeting on the 31st take place?
- 2 A The administrative conference room.
- 3 Q And who all was present for that?
- 4 A All department heads, all unit managers, and the
- 5 administrative business girls.
- 6 Q Anyone else present?
- 7 A The consultants and -- I don't remember if Dave C. was
- 8 there at that meeting or not.
- 9 Q How many people would you say were at that meeting?
- 10 A Those meetings were always full.
- 11 Q Well, I'm asking just specifically about the October 31st.
- 12 A I don't remember. Maybe around 20.
- 13 Q Was it similar to the October 28th group meeting with the
- 14 consultants you had attended?
- 15 A Yes.
- 16 Q And what happened, to you recollection, in that October
- 17 31st afternoon meeting?
- 18 A We were informed that Kathy McCormick, the director of
- 19 nursing, was terminated.
- 20 Q Who informed you that (sic)?
- 21 A Patrick Weir.
- 22 Q And what else happened in that meeting?
- 23 A One of the employees asked why. And Dave C. -- oh yes.
- 24 Dave C. was at the meeting. So Dave C. stated that in their
- 25 investigation on the Union that most of staff stated that

1 leadership was not holding people accountable for their action
2 here. So they terminated Kathy McCormick, the director of
3 nursing, and they terminated Lora Hosie, the director of -- on
4 Human Resources -- the baby (phonetic) --

5 Q I'm going to stop you there. I'm going -- just -- my --
6 my best recollection of the spelling of Lora Hosie is
7 L-O-R-A H-O-S-I-E.

8 JUDGE SANDRON: Again, Ms. Lanouette, if you have any, you
9 know, thing different, please speak up.

10 MS. LANOUEITE: That's right.

11 Q BY MS. PENDER: Okay. Ms. Golden, what else do you recall
12 from that October 31st meeting?

13 A I -- I don't recall much from that meeting there. Just
14 that Kathy was terminated.

15 Q And after October 31st, did you ever attend another one of
16 those meetings with the consultants and the unit managers and
17 department heads?

18 A Yes. I learned that those consultant meetings were now
19 held twice a day. One in the morning after morning report and
20 one in the afternoon before everyone went home.

21 Q And was this on a daily basis?

22 A Yes.

23 Q Do you remember any specifics from any one of those
24 meetings?

25 A November -- Monday, November 4th, 2019 was my first

1 meeting with the consultants in the morning.

2 Q I'm going to -- you said Monday, November 4th of 2019?

3 A Yes.

4 Q Okay. And again, tell me where that meeting took place.

5 A In the administrative conference room.

6 Q And about what time of day?

7 A It was after morning report, around 10 a.m.

8 Q And who all was there?

9 A All department heads, unit managers, the business
10 administration girls, the consultants, and Dave C.

11 Q And tell me what happened in that meeting. Who said what
12 to the best of your recollection?

13 A In that meeting, Dave C. informed us that -- he was
14 talking about the Union and what the Union can do and what they
15 can't do.

16 Q You --

17 A He informed us --

18 Q Okay.

19 A -- that he -- the first thing he was going to do was get
20 his managerial rights and that he could hold raises for up to a
21 year while (audio interference) signed.

22 Q For -- he said he could raises. Can you repeat that last
23 part?

24 A For up to a year while a contract was being signed. They
25 gave out -- there -- there was literature that we were supposed

1 to (audio interference) staff about. There was a -- a
2 PowerPoint presentation that we -- to watch. And then we had
3 to send staff to the administrative conference room to watch.
4 But we could only send staff that we thought were not for the
5 union. Anybody that we thought were for the union or was
6 neutral, we were told not to send to the PowerPoint
7 presentation.

8 JUDGE SANDRON: That was Dave C. said that?

9 THE WITNESS: Yes.

10 JUDGE SANDRON: Yeah. Go ahead. Keep going.

11 A They -- they --

12 Q BY MS. PENDER: When you say they, can you just identify
13 who -- who you mean?

14 JUDGE SANDRON: Right. If you can recall who --
15 specifically, who said things.

16 THE WITNESS: Well, Dave and Keith kind of switched back
17 and forth on when they talked and kind of just bounced off of
18 each other, really.

19 Q BY MS. PENDER: Okay. So just to --

20 A Wh -- wh -- one would say -- yeah, one would say something
21 and then the other would come in with something else and --

22 Q Okay. So just to the best of your ability -- if you
23 can -- just what you recall.

24 A They requested that staff come in on their off shifts and
25 monitor the staff or ask them if they needed any assistance.

1 But you didn't have to give any assistance. You just were
2 looking for any suspicious activities. You were looking to see
3 if anybody was gathering in groups. We were looking to see
4 if -- when we walked by, if they stopped speaking or if they
5 continued speaking. We were looking to see if any (audio
6 interference) that were not job related. And they asked us to
7 hand out literature and talk with the staff about the
8 literature.

9 Q Anything else?

10 A They would tell us (audio interference) held in public
11 places and told us that it was not illegal to go to these
12 public places, like restaurants and see if people were
13 organizing or having meetings and if we could just (audio
14 interference) as to what they were saying and report that back
15 to one of the meetings.

16 Q Can you re -- can you repeat that last part? You were
17 breaking up.

18 A They -- they informed us that there were union meetings
19 being held in restaurants near (audio interference) and told us
20 that it was not illegal for us to go to s -- and sit and eat --
21 listen to see what we could hear, if they -- if we saw any
22 meetings happening. And then report back those meetings --
23 what we had heard.

24 Q Were any particular restaurants suggested?

25 A Angela's Pizza which is right down the street from the

1 job.

2 Q Did you -- Ms. Golden, did you follow any of the
3 suggestions that were -- that were made?

4 A I did in the beginning, when the literature that we were
5 told to bring to our units (audio interference) to the unit. I
6 did attempt to talk with staff and educate staff about the pros
7 and the cons of the Union. But for the most part, I told the
8 staff to do their own research and -- a -- as best that they
9 could but that I could answer (audio interference) as best I
10 could if they had any, in the beginning.

11 Q And Ms. Golden, after you came back from your suspension
12 on October 31st, did there come a time when you were called in
13 for another individual meeting?

14 A Yes. On November 4th, 2019.

15 Q And about what time of day were you -- were you called for
16 that?

17 A That meeting, I believe was in the afternoon.

18 Q And who --

19 A After --

20 Q Go ahead.

21 A After the last consultant meeting.

22 Q And where was that meeting held?

23 A That meeting was in Patrick Weir's office.

24 Q And who all was present for that?

25 A Carolyn Carchidi, the -- the new (audio interference)

1 nursing.

2 Q Okay. I'm going to stop you to spell her name.

3 MS. PENDER: That's C-A-R-O-L-Y-N C-A-R-C-H-I-D-I.

4 JUDGE SANDRON: Thank you.

5 MS. GOLDEN: Patrick Weir, Dave C., and Mary Pat.

6 Q BY MS. PENDER: And how long did that meeting last?

7 A The -- about an hour, I want to say.

8 Q And what happened in that meeting, to the best of your
9 recollection?

10 A Dave C. told me that I was special because he doesn't
11 bring people back from suspension. He told me that through
12 Patrick Weir's advocacy for me (audio interference) deeper and
13 found that I was a green, new nurse manager.

14 Q Sorry. I'm going to stop you.

15 A And I had --

16 Q Just -- I'm going to just have go back over that one more
17 time. Sorry. There was breaking up. Go ahead.

18 A Dave C. told me that I was lucky or special, that --
19 because he doesn't bring people back from suspension; that
20 through the advocacy of Patrick Weir, did he look deeper into
21 me and found that I was a green, new manager and that I had not
22 been properly oriented to my position. He informed me that I
23 was going to have a new mentor in Mary Pat and she was going to
24 mold me into the manager that they wanted. He told me that I
25 was either a great actress, great liar, or clueless because

1 people that I had told them were not for the union, he had as
2 for the union. And that he -- that was basically it. That it
3 was -- I -- I was -- he was bringing me back and I should be
4 grateful.

5 JUDGE SANDRON: Wh -- let me just fact check. Were you --
6 were you ever asked to give names of people that were for or
7 against the Union before this?

8 THE WITNESS: Yes.

9 JUDGE SANDRON: And when was that? I -- I'm not sure
10 which is -- do you remember -- wh -- what -- at what meeting
11 you were asked for that? Or how you --

12 THE WITNESS: From the beginning, Your Honor. So I only
13 attended the first meeting when the consultants and (audio
14 interference) came in on October 28th. And then I was
15 dismissed, basically, because I was suspended until October
16 31st. So I didn't really get a gist of what was going on in
17 the meetings until November 4th, 2019 when I attended the first
18 morning meeting for myself, for the consultants. And that's
19 when everything started to become clear on what we were
20 supposed to do.

21 JUDGE SANDRON: Did -- did you ever actually you -- give
22 names?

23 THE WITNESS: I did, Your Honor.

24 JUDGE SANDRON: But when was that? Because you say -- I --
25 I'm just trying to see the sequence.

1 THE WITNESS: I don't have specific days, but for --
2 starting from November 4th, 2019 until November 19th, 2019 --
3 or really November 18th of --

4 JUDGE SANDRON: All right.

5 THE WITNESS: -- 2019, every day we were asked to give
6 names and --

7 JUDGE SANDRON: Okay. All right. Maybe I -- but
8 you're -- so you're saying that you gave the names after
9 November 4th?

10 THE WITNESS: Yes.

11 JUDGE SANDRON: Not before that meeting?

12 THE WITNESS: No.

13 JUDGE SANDRON: All right. Yeah, I wanted to clarify
14 that, because I was -- I was a little bit confused. So that's
15 fine.

16 MS. PENDER: Okay.

17 Q BY MS. PENDER: Ms. Golden, what else, if anything was
18 said in that -- in that November 4th individual meeting by --
19 by Dave C.?

20 A He said that I was back. He said I was a great actress --

21 Q Just anything that -- not what you've already said, but
22 just if there's anything further.

23 JUDGE SANDRON: All right. Think for a minute and then --

24 THE WITNESS: Yeah, I was trying to think.

25 JUDGE SANDRON: Go ahead. Take your time.

1 A I -- I don't -- I don't recall at this time.

2 Q BY MS. PENDER: Did he give you any -- did he give you any
3 pointers in that meeting?

4 A Oh, yes. He told me -- after he stated to me that I was a
5 great actress, or a liar, he told me I was no longer allowed to
6 state what I thought about the employees, like, if I thought
7 they were for the Union or not for the Union. I was now
8 supposed to report body language, whether or not they made eye
9 contact with me; whether they stayed with me while we talked
10 about (audio interference), whether or not they crumpled the
11 literature up after we were over, and if they spoke to anyone
12 else after we spoke about the literature.

13 Q Did -- in that meeting, did anyone say what, if any,
14 specific managerial skills you needed to work on?

15 A No.

16 Q Did anyone ever follow up with you after November 4th of
17 2019 about following those pointers from Dave C.?

18 A Yes, in a afternoon consultant meeting. I don't remember
19 the day. I believe it was the week of November 4th, 2019.
20 Dave C. called on me specifically in the meeting, and asked me
21 if I had anything to report. I stated, yes, that I had spoken
22 to an employee; that the employee looked at me, eye contact the
23 whole time. We were talking about the literature. That they
24 did not crumple the literature up when we were done, and that I
25 watched this employee walk back to their office and they

1 didn't -- they took the literature with them and did not speak
2 to any other employees. Dave was (audio interference) about my
3 presenting and told me that that's how you report. I felt very
4 good.

5 Q In that meeting, did you name the employee you had spoken
6 to?

7 A I did, yes.

8 Q And when you say literature, what literature had you
9 talked to the employee about?

10 JUDGE SANDRON: Well, who -- who was the employee? I -- I
11 mean, you mentioned the name, so it's not, not a secret.

12 THE WITNESS: His name was Simon Naccarato. I do not know
13 how to spell his last name.

14 MS. PENDER: I believe it's Simon, S-I-M-O-N, and I'm --
15 I'm pretty sure Naccarato is N-A-K-A-R-A-T-O.

16 JUDGE SANDRON: Okay.

17 MS. PENDER: But I can double-check that and just --
18 Am I wrong, Dawn?

19 MS. LANOUE: N-A-C-C --

20 UNIDENTIFIED SPEAKER: A-R --

21 MS. LANOUE: A-R --

22 UNIDENTIFIED SPEAKER: -- R-A-T-O.

23 MS. LANOUE: -- R-A-T-O.

24 MS. PENDER: Okay.

25 JUDGE SANDRON: Thank you.

1 MS. PENDER: Thank you.

2 JUDGE SANDRON: There's nothing confidential if she
3 mentioned it, you know, directly to management.

4 Q BY MS. PENDER: After that -- after that meeting, the week
5 of November 4th, did -- do you recall any other consultant
6 meetings where you spoke up?

7 A Yes. The week of November 11th, I spoke up once at a
8 consultant meeting because my partner's name was being brought
9 into the meeting and my best friend's name, and I wanted to
10 clarify that they were not for the Union. And another time,
11 where a per diem LPN came to me to speak to me about what
12 (audio interference) in the building.

13 Q I'm sorry, can you repeat that? Came to you to speak to
14 you about?

15 A An LPN -- per diem LPN came to me to speak to me about
16 what she called the hostilities in the building. And how she
17 felt that this Union thing was a witch hunt and people were
18 being bullied in the building. I thought they needed to hear
19 that. So I waited until after the consultant meeting was over
20 so that I didn't have to talk in front of everyone, and I
21 (audio interference) to the four consultants; Julie Cole, and
22 there were a few other nurse managers in the room. I don't
23 remember who they were.

24 Q Do you remember the names of the consultants who were
25 there?

1 A Keith, Milo, Mike. And actually, I think it was just
2 those three. By this time, the females had disappeared and we
3 didn't see them anymore.

4 Q And so in that -- in that conversation, where was -- where
5 did that conversation take place?

6 A In the administrative conference room.

7 Q And do you recall what time of day that was?

8 A It was in af -- the afternoon. I don't remember the exact
9 time.

10 Q You said it was -- repeat that. It was when?

11 A After the afternoon meeting, but I don't know the exact
12 time.

13 Q Okay. And what -- to your recollection, what did you say?

14 A I stated that people were (audio interference) felt that
15 (audio interference) the witch hunt going on --

16 Q Sorry, Tara. I'm going to ask -- I'm going to have you
17 just start that over a little slower.

18 A I stated that -- I stated that -- that the -- the staff
19 were scared to come in the building. They were scared to talk.
20 That this particular nurse felt that it was a witch hunt and
21 that people were bullying. Julie Cole stated that we're
22 holding people accountable for their actions and now we're
23 bullying, to which I responded that people were coming up on
24 the units that didn't belong on the units, talking to staff
25 about the Union that didn't need to be there. People were

1 supposed to be working. And Julie asked me who was coming to
2 the units. The nurse managers that were there agreed with me,
3 that staff were -- were being talked to by staff that didn't
4 belong on the units.

5 Q When you say staff that didn't belong on the units, who
6 were those people coming on to the units?

7 A They were directors of departments, unit managers, and the
8 administrative business girls. And this is a part of asking
9 staff if they need any help, but you didn't have to offer any
10 help. You were just monitoring staff to see if they were doing
11 their jobs. On NBI, sta -- the only staff that are supposed to
12 be --

13 JUDGE SANDRON: All right. Wait one second. Don't go on
14 beyond the --

15 THE WITNESS: Okay. --

16 JUDGE SANDRON: -- what you said at that time.

17 Q BY MS. PENDER: Was this something -- was peop -- was --
18 was department heads and administrative personnel coming onto
19 the unit something that was happening on your unit, NBI?

20 A Yes.

21 Q And you observed that?

22 A I did, yes. And -- and they didn't belong on my unit.
23 There were rules --

24 Q Why -- why didn't -- why didn't they belong on NBI?

25 A The rule for NBI is, if you are not assigned to that unit,

1 there is no reason for you to be on that unit.

2 Q And why is that?

3 A There's no -- because it's a low-stimulus behavioral unit.
4 Like, you have to keep the stimulus low for these particular
5 neighbors. And staff coming on the unit that don't belong
6 there brings high stimulus for these neighbors.

7 Q All right. I'm going to direct your attention --

8 JUDGE SANDRON: Well, let me just --

9 MS. PENDER: Go ahead, Judge.

10 JUDGE SANDRON: -- interject here. So would it be correct
11 to say that the people there are -- are more easily agitated?

12 THE WITNESS: Yes.

13 JUDGE SANDRON: Thank you. And did -- and did you mention
14 the name of that LPN? Did you actually mention her name or not
15 in that meeting?

16 THE WITNESS: I did, yes.

17 Q BY MS. PENDER: And what's her name?

18 A Her name is Nadia. I do not know her last name,
19 N-A-D-I-A.

20 JUDGE SANDRON: Thank you.

21 Q BY MS. PENDER: Thank you. And so redirecting back to
22 that meeting. After you voiced those complaints on behalf of
23 Nadia, what -- what else was said?

24 A Keith suggested that she (audio interference).

25 Q Say that -- she suggested what?

1 A Keith suggested that she was for the Union.

2 Q Did you respond to that?

3 A Yes. I did not -- I -- I disagreed with him, and I told
4 him that it was ridiculous; that just because people were not
5 for corporate at this time does not mean that they were for the
6 Union. That Nadia was just expressing her feelings and opinion
7 on the hostility in the building and that she would no longer
8 be giving us time. She was going to take her time to (audio
9 interference) facility until the Union vote was over.

10 Q How long did that conversation last, to your recollection?

11 A Not very long. Maybe a half an hour, 40 minutes.

12 Q After that conversation, what, if anything, did you do?

13 A After that conversation, I shut down. I was very
14 discouraged about what was happening in the building. And I
15 continued to take the literature off the tables, like I was
16 supposed to, and bring it to the units. But I did not speak to
17 the staff about the literature anymore. I never came in on my
18 off time and monitored the staff. And I never went to other
19 people's units to monitor the staff while it was my on-time.

20 Q Did you attend further meetings with the consultants after
21 that point?

22 A Yes, I -- I had to. They were mandatory meetings.

23 Q Did you participate in those meetings?

24 A I did not, unless I felt that it was something I had to
25 speak up on right then and there. When they -- yes.

1 Q Okay. Ms. Golden, after the November 4th meeting, where
2 you were told that Mary Pat Carhart would be your mentor, did
3 you ever have any other conversations with Mary Pat Carhart?

4 A I had an individualized meeting with Mary Pat. I don't
5 remember the actual day. It was in Patrick Weir's office.

6 JUDGE SANDRON: Do you remember approximately how much
7 after November 4th it was, compared to when you were
8 terminated?

9 THE WITNESS: It was either the week of November 4th or
10 the week of November 11th. To be honest with you, I -- I don't
11 remember.

12 Q BY MS. PENDER: And who was present for that meeting?

13 A Just me and Mary Pat.

14 Q And what happened in that meeting?

15 JUDGE SANDRON: Did we get the time of day on that?

16 Q BY MS. PENDER: What time of day was that?

17 A I believe it was in the afternoon, because I believe I
18 went home, like, right after the meeting.

19 Q And what happened in that meeting?

20 A That meeting was -- we - Mary Pat and I did not speak
21 about the Union at all in that meeting. That meeting was about
22 NBI and the direction that I wanted to take NBI in.

23 Q And was your ability as a manager discussed in that
24 meeting?

25 A No. It was literally just me talking about some mantras

1 that I had learned in a training a couple of weeks prior that I
2 wanted to instill in -- in -- on NBI and -- and hoped that it
3 would help with the flow and the cohesion of all the
4 departments, because it's difficult to manage that unit with
5 all the different departments.

6 Q And so after that meeting, that one-on-one with you and
7 Mary Pat where you talked about NBI, did you ever have any
8 further individual meetings with her?

9 A Yes. The week of November 11th, I don't remember which
10 actual day, I just remember being very upset at (audio
11 interference) in the afternoon consultant meeting. And I
12 (audio interference) tried to quickly and was pulled by Mary
13 Pat and Carolyn Carchidi into another meeting.

14 Q Let me ask you, about how long before your termination was
15 this meeting that we're now talking about?

16 A It was -- I -- I actually think it is just a couple of
17 days before my termination, to be honest with you.

18 Q Okay. And so you were pulled into a meeting with Mary Pat
19 Carhart and Carolyn Carchidi. Where was that meeting?

20 A In Patrick Weir's office.

21 Q And what time of day was that?

22 A In the afternoon, after the afternoon consultant meeting.

23 Q And was anyone other than the three of you present?

24 A I don't believe so, no. I can't recall.

25 Q And how long did that meeting last?

1 A Probably about a half an hour, 45 minutes. Or maybe 45
2 minutes to an hour.

3 Q And tell me -- tell me what happened in that meeting.
4 What was said?

5 A Mary Pat asked me what I had to say. And I exploded and
6 said that this was a witch hunt and it was ridiculous, and that
7 people that they had for the Union were not for the Union. And
8 that people -- there -- there was hostility in the building.
9 Mary Pat told me to not use the words witch hunt because that's
10 not what they were doing --

11 Q I'm going to stop you for a second, Ms. Golden. What do
12 you mean when you say you exploded?

13 A I -- I was -- I -- I was just -- I'm very animated when I
14 talk. So I was just loud and animated, which people perceive
15 for -- I -- I'm just -- I'm a loud talker, is what I am.

16 Q Were you -- were you yelling at them?

17 A I don't think that I was yelling, but yeah, I am loud.

18 Q Did you curse at all?

19 A No, I did not.

20 Q Okay, go ahead. What else -- what else was said during
21 that meeting?

22 A Mary Pat told me not to use the words witch hunt because
23 that's not what they were doing. They were trying to figure
24 out who was for the Union and who wasn't. She then informed me
25 that I was han -- seen handing out Union cards, which then I

1 just sat back in the chair and said, who did I hand this Union
2 card out to? Where was I when I handed this Union card and
3 like, where was I, like, when I handed the Union card out?

4 Q Why -- why did you say those things?

5 A Because I -- I wanted to know. I -- I've never seen a
6 Union card.

7 JUDGE SANDRON: All right. Why don't you just let her,
8 you know, say, and then you can follow up. Otherwise we're
9 going to get, like, in -- disrupted.

10 Q BY MS. PENDER: Okay. What else happened, Ms. Golden?

11 A I -- I just told her that I -- I reiterated more that I've
12 never seen a Union card. I wouldn't know what one looked like
13 if it hit me in the head. That I have never been contacted by
14 the Union; that I had never contacted the Union. She told me
15 that -- she asked me how I could prove to them that I wasn't in
16 with the Union, and I told her I didn't know how to do that,
17 other than to just keep saying, I'm not for the Union. I'm not
18 Union organizing. I've never been contacted by the Union.
19 I've never contacted the Union personally. Nobody has spoken
20 to me about the Union. Like, I -- I don't know anything about
21 what -- what the -- the consultants and Mary Pat and
22 administrative are telling me about the Union.

23 JUDGE SANDRON: Did she answer you when you asked for the
24 specifics? Did she reply at all?

25 THE WITNESS: No, she did not.

1 JUDGE SANDRON: And this -- and you -- were you at the
2 consultants meeting and you got upset there and then they
3 pulled you out of that meeting?

4 THE WITNESS: They pulled --

5 JUDGE SANDRON: Because you're saying you were upset.

6 THE WITNESS: Yes. So I was upset at the consultant's
7 meeting. I tried to -- after it was over, I tried to exit
8 quickly to not be talked to by anyone. And that (audio
9 interference) Tara, do you want to come to Patrick Weir's
10 office for a meeting with me, please? So I went to a meeting
11 with Mary Pat as soon as it was over.

12 JUDGE SANDRON: Okay. Thank you.

13 Q BY MS. PENDER: What --

14 JUDGE SANDRON: Go ahead, Ms. Pender.

15 MS. PENDER: Thank you, Your Honor.

16 Q BY MS. PENDER: What else do you recall, Ms. Golden, from
17 that meeting?

18 A I -- I think that's about it, that -- yeah.

19 Q Did you discuss any activities or activities off work
20 time?

21 A Well, I reiterated that I would not be willing to come in
22 on my off time to monitor the staff, to prove to them that I
23 was not a Union organizer or a Union leader, and that I would
24 not be going to other units to monitor staff in my on-time
25 either.

1 Q And after that meeting ended, what did you do?

2 A I went home. It was the end of the day.

3 Q Did there come a time when you -- actually, I'm going to
4 direct your attention to November 20th of 2019. What, if
5 anything, happened on that day? Walk me through that day.

6 A November 20th, 2019, I was called by Patrick Weir around
7 4, 4:15 in the afternoon, and he asked me what I was doing.
8 And I told him that I had some work to get done and that I
9 would be leaving around 5. He told me to come and see him
10 before I left. And I said to him, why? Are you going to fire
11 me, because if you're going to fire me, then do it now, so I
12 can leave (audio interference). He said I was being ridiculous
13 and come and see him --

14 Q Ms. Golden, I'm going to stop you. Can -- can you repeat
15 that? After he asked you to come down, before you left, what
16 did you say?

17 A I -- he asked me to come see him before I left for the
18 day, and I asked him why. And asked him if he was going to
19 fire me, because if he was going to fire me, I was just going
20 to leave then. And he told me I was being ridiculous and just
21 to come down when I was finished, around 5. So at 5:15, I went
22 to Patrick Weir's office, where Patrick Weir and Carolyn
23 Carchidi were.

24 Q And what happened?

25 A He -- Patrick Weir smiled at me, asked me to close the

1 door and sit down. So I closed the door and I went to sit
2 down. And as soon as I sat down, his facial expression changed
3 and he said that I was no longer a good fit and that I was
4 being relieved from my position. I then started to plead and
5 asked him what I did wrong and if I did something wrong from
6 (audio interference) and he just said that --

7 Q Sorry, Tara. You -- you said you asked him --

8 A I asked him what I did wrong, and asked him if it -- there
9 was something from a managerial point that I could work on.
10 And he told me that it was just not a good fit and the employer
11 was going in a different direction and that I was no longer
12 employed at the facility. I continued to plea and --

13 JUDGE SANDRON: (Indiscernible, simultaneous speech) --

14 A -- asked what I did wrong --

15 JUDGE SANDRON: I tell you what do -- don't, you know --
16 characterize what you did. Just tell us, you know, what you
17 actually did or said.

18 THE WITNESS: Okay. I -- I just asked (audio
19 interference) and he told me that it was over and that he
20 needed (audio interference) and my badge and that I was to
21 leave. And Carolyn Carchidi walked me out the back gate. I
22 asked Carolyn what I had done wrong, and Carolyn stated that
23 she didn't know what they were doing. I then asked her if my
24 friend could clean my office out and she agreed to that, and I
25 left.

1 Q BY MS. PENDER: After you left the facility on November
2 20th of 2019, did you hear anything further from Northeast?

3 A No.

4 MS. PENDER: I have no further questions for this witness
5 at this time, Your Honor.

6 JUDGE SANDRON: I think maybe we can see if there's any
7 further direct by counsel for the Charging Party and then maybe
8 take a -- like, a half hour break before we begin cross-
9 examination.

10 So either Ms. Joslin or Ms. Williamson, do you have any
11 questions you would like to ask Ms. Golden?

12 MS. JOSLIN: Your Honor, I just have one question. Thank
13 you.

14 **CROSS-EXAMINATION**

15 Q BY MS. JOSLIN: Ms. Golden, did you receive a termination
16 letter?

17 A No, I did not.

18 Q Did you receive any notice of termination at all?

19 A No, I did not.

20 Q And were you shown a document that said something like
21 notice of termination on top of it during that meeting with Mr.
22 Weir?

23 A No, I was not.

24 Q Okay.

25 MS. JOSLIN: That's all I have, Your Honor. Thank you.

1 JUDGE SANDRON: Okay. And Ms. Tuminaro, do you have any
2 questions?

3 MS. TUMINARO: I just have one question.

4 **CROSS-EXAMINATION**

5 Q BY MS. TUMINARO: Ms. -- Ms. Golden, you testified that
6 the employer asked people -- unit managers to do activities on
7 their on-time and then on their off-time. Was -- what do you
8 mean by their off-time?

9 A So we were given times that Union activity might be
10 happening, between -- after 11 p.m. So they would tell us that
11 good times to come into the building would be around 1 a.m. to
12 3 p.m. to observe staff and ask them if they needed any help or
13 to see if they were gathering in groups or if they were doing
14 any extracurricular activities that did not have anything to do
15 with the job.

16 Q And was the employer offering to pay for those -- for that
17 work if it was on the manager's off-time?

18 A My understanding is that people did punch in when they did
19 this, but I didn't do it, so I -- I don't know the answer to
20 that.

21 MS. TUMINARO: Thank you. Nothing further.

22 JUDGE SANDRON: All right. Well, I think that maybe it's
23 not 12:10. Maybe we can just take about a half hour or so.

24 MS. LANOUILLE: Your Honor, I would request the (audio
25 interference) affidavit.

1 JUDGE SANDRON: All right. Do you want to turn that over
2 now? I don't know how -- how we --

3 MS. LANOUEETTE: You can just email it to me, if that
4 works.

5 MS. PENDER: I -- I will. Your Honor, do you want me to
6 send that now before we break for lunch?

7 JUDGE SANDRON: That would be fine. Maybe then we'll --
8 do you want to -- maybe we can take a slightly longer lunch
9 break so Ms. Lanouette has a chance to look over the -- how --
10 or do you want to say it on the record how long the affidavit
11 is and -- and the date?

12 MS. PENDER: That's a good question. Let me -- let me
13 pull that up.

14 JUDGE SANDRON: You can take (Indiscernible, simultaneous
15 speech) --

16 MS. PENDER: It is 18 pages.

17 JUDGE SANDRON: And what was the date on the affidavit?

18 MS. PENDER: The date is January 31st, 2020.

19 JUDGE SANDRON: All right. Well, maybe we can take 45 --
20 well, it's actually 12:11. Maybe we can come back at 1 and
21 then that would give Ms. Lanouette also time to review the
22 statement --

23 MS. PENDER: Okay.

24 JUDGE SANDRON: -- before she does her cross.

25 MS. LANOUEETTE: That's fine, Your Honor.

1 JUDGE SANDRON: Okay. So I'll -- we'll adjourn then.
2 It's now 12:11. We'll come back at 1.

3 (Off the record at 12:12 p.m.)

4 JUDGE SANDRON: For the record, I -- I understand, Ms.
5 Pender, you provided the affidavit to the Employer's counsel.
6 And have -- have you -- and then she has it at this point?

7 MS. PENDER: Yes, Your Honor.

8 JUDGE SANDRON: Okay. Go ahead, Ms. Lanouette, please.

9 **CROSS-EXAMINATION**

10 Q BY MS. LANOUEETTE: Ms. Golden, you indicated that before
11 you were a unit manager, you were an LPN?

12 A Not at that facility, no. I was an RN with my associate's
13 degree. And then I changed to an RN with my baccalaureate
14 degree while I was an employee at (audio interference) --

15 JUDGE SANDRON: Did we get the last part?

16 MS. LANOUEETTE: She froze.

17 THE WITNESS: -- at the Northeast Center. You froze. I
18 don't know if you can hear me or not but you're frozen.

19 JUDGE SANDRON: Oh, I think we lost her temporarily.
20 There she is.

21 THE WITNESS: Sorry. You froze.

22 Q BY MS. LANOUEETTE: Okay. Ms. -- Ms. Golden, what was your
23 position at Northeast before you became a unit manager?

24 A I was the RN charge nurse for the MCU unit, medically
25 complex unit.

1 Q And as the RN charge nurse on the MCU unit, did you report
2 to the unit manager of the MCU unit?

3 A Yes.

4 Q The unit managers are -- have 24/7 responsibility for
5 their units; is that right?

6 A I don't believe so, no. I believe it ends when their
7 shift ends.

8 Q So you don't think you have any responsibility as a unit
9 manager for what happens on your unit when you're not there?

10 A No.

11 JUDGE SANDRON: Can I ask one thing? Do we have -- I know
12 there's been a lot of documents that were filed on SharePoint.
13 Do we have the job description for a unit manager? Is that in
14 the -- in the documents that have been filed?

15 MS. LANOUE: Yes. And that's actually where I am going
16 next.

17 JUDGE SANDRON: Oh, okay, fine.

18 Q BY MS. LANOUE: Ms. Golden, I am going to show you
19 what's been marked as Respondent's Exhibit 24. And ask if this
20 is the job description for the unit manager at Northeast
21 Center. And I will have to scroll through it for you. I'll
22 try to do that slowly.

23 A I was never given a job description for a unit manager at
24 the Northeast Center. So this could possibly be, but I never
25 received one.

1 Q Did you -- did you ever look for one?

2 A No.

3 Q Did you ever ask for one?

4 A No.

5 Q So you just went about your job without having any idea
6 what your job description was?

7 JUDGE SANDRON: Well, I think you're getting --

8 MS. JOSLIN: Objection to form.

9 JUDGE SANDRON: All right. Just a second. I think you're
10 getting a little argumentative with her.

11 Q BY MS. LANOUEETTE: You worked on the NBI unit; is that
12 correct?

13 A Yes.

14 Q Okay.

15 MS. LANOUEETTE: And it will be a little slow, Your Honor,
16 as I try to put up documents.

17 JUDGE SANDRON: Yes.

18 MS. LANOUEETTE: Doing the best I can.

19 Q BY MS. LANOUEETTE: Are you familiar with the NBI unit
20 policy?

21 A I'm familiar with -- I -- no, not really, no. The NBI
22 policy was being altered when I was the nur -- unit manager. I
23 was asked to go through it a couple of times to see if I wanted
24 to add or take anything out. But they were -- it was a work in
25 progress when I was the unit manager on NBI.

1 Q So you've seen the NBI policy, is that what you're saying?

2 MS. JOSLIN: Object to form.

3 A I had seen --

4 JUDGE SANDRON: Yes, I -- I think -- if you're showing her
5 specific, you -- you have to ask her, you know, which policy
6 she -- you know, and -- and let her identify what she's
7 actually seen, because it might be more than one.

8 Q BY MS. LANOUEETTE: Well, Ms. Golden, let me show you
9 what's been marked as Respondent's R-30 and ask if you've seen
10 this NBI policy. And it has a revised date there of 11/1/2013.

11 A Say that again?

12 JUDGE SANDRON: Have you ever seen this document? Counsel
13 is going to scroll through it and -- to see if you recall
14 having seen it.

15 A I have seen (audio interference) policy. I cannot tell
16 you if this was the one that I've seen before.

17 Q BY MS. LANOUEETTE: In the NBI unit policy, does it
18 describe the role of the nurse manager -- or the unit manager?

19 A The NBI policy that I saw was in regards to the neighbors
20 only. It did not have anything in regards to staff.

21 JUDGE SANDRON: Well, look -- have you seen this
22 particular document? I think we need to see if you -- if you
23 recognize it. You know, maybe go through the whole document
24 and then tell us if -- if you have seen a document in this form
25 or if you recall seeing it in this form. So counsel can keep

1 scrolling. I know it's -- it's a little cumbersome in Zoom
2 hearings, but that's -- you know, in terms of documents, but to
3 make sure that you see the whole document and then see if you
4 can remember specifically seeing this one.

5 Q BY MS. LANOUE: And you can just ask me to slow or stop
6 if you need that.

7 A So you can stop right there. I can tell you, no, I have
8 not seen this particular documentation for NBI policy. And the
9 reason why I can say that is because transition levels were not
10 on the original NBI policy that I -- that I was presented. It
11 was a work in progress and they were attempting to change NBI.
12 And I was a part of the transition levels. Those were my
13 ideas.

14 Q So maybe we could say, what else did you ask to have
15 changed in the NBI policy besides transition levels?

16 A It wasn't a change the NBI policy for transition levels.
17 What I had suggested in the team meeting was that we had levels
18 to how people transitioned off of NBI, so that they didn't
19 reoccur and get put back on NBI so quickly, and they had better
20 success in the general population of the building.

21 JUDGE SANDRON: Do you remember when that happened, that
22 you made those recommendations?

23 THE WITNESS: The recommendations were still in progress
24 while my -- basically, my whole -- entire year and some change
25 as the unit manager.

1 JUDGE SANDRON: At NB --

2 THE WITNESS: Of NBI, yes. So they were not finalized by
3 the time I had left.

4 Q BY MS. LANOUEETTE: You indicated that CSS therapeutic and
5 activities report to their supervisors.

6 A Yes.

7 Q When they are on the NBI unit, if a problem arises with
8 them, aren't you empowered to deal with it?

9 A No.

10 Q Well, their supervisors don't come on the unit, do they?

11 A Yes.

12 Q Their supervisors regularly come on the NBI unit to check
13 on their employees?

14 MS. JOSLIN: Object to form.

15 JUDGE SANDRON: Maybe you can re -- rephrase that.

16 Q BY MS. LANOUEETTE: Do their supervisors regularly come on
17 the unit to check -- to check on their employees?

18 JUDGE SANDRON: You know, regularly might be -- how -- how
19 often do they come on to check? Or -- or does it depend on the
20 situations?

21 THE WITNESS: Well, the activities or recreational
22 department had a supervisor that was on NBI. She had an office
23 on NBI. So she took care of her staff. The supervisor for the
24 program specialists, yes, came on the unit on a regular basis
25 and checked on his staff. And the supervisors for the CSS

1 workers, yes, came on the unit on a regular basis and checked
2 on their staff. And the supervisor for nursing came on the
3 unit, yes, at a regular basis to check on their staff.

4 JUDGE SANDRON: And can you just give us a rough idea,
5 when you're saying regular, you know, what that means.

6 THE WITNESS: Every day, every shift.

7 JUDGE SANDRON: And -- and just while we're on -- on the
8 mat -- the subject, did you -- did you ever issue any kind of
9 counselings or oral reprimands or written reprimands?

10 THE WITNESS: Yes, at the direction of the directors or
11 the supervisors.

12 JUDGE SANDRON: Did you ever issue any of those on your
13 own authority?

14 THE WITNESS: No.

15 Q BY MS. LANOUE: Ms. Golden, didn't you issue discipline
16 for a CNA after you were told by human resources that you
17 could?

18 A After I was told by human resources to do it, yes.

19 Q And you could -- couldn't you suspend employees for abuse
20 pending investigation?

21 A Yes. Anybody in the building could stop abuse and escort
22 that employee out of the facility and then let the supervisors
23 know what they did. It was a part of corporate compliance and
24 stopping abuse.

25 Q For RNs and CNAs, did you do evaluations?

1 A Yes, at the direction of the human resource director.

2 JUDGE SANDRON: Did you -- and I know this can get a
3 little bit complicated, but did -- did you prepare any kind of
4 recommendations which you took to -- you know, to other
5 authority for final approval? Or -- or how did that work? Or
6 did you discuss it and they told you what to write? Or can you
7 give us a little idea of -- of how that worked.

8 THE WITNESS: So I used the employee template for the
9 write-ups, and I just followed what it said. And then handed
10 it to human resources after it was completed. And I don't know
11 where it went from there.

12 JUDGE SANDRON: Well, did they return it to you? Because
13 you say, like, if you wrote something up and you turn it in to
14 HR, did you have any further involvement?

15 THE WITNESS: No. I would -- I would -- so I got the
16 template from HR. I would write what needed to be written per
17 the template. I would just follow the instructions. And I
18 would present it to the employee. The employee would then have
19 opportunity to write their side on the form and sign it. And
20 then I would bring it to human resources. If it -- so I
21 brought it to human resources when it had to do with CNAs and
22 nurses. When it had to do with activities, program
23 specialists, or CSS, either their supervisor would write it up,
24 or if I was directed by their director to do a write-up, I
25 would then bring the write-up to that director when it was

1 finished. And I don't know where it went after that.

2 JUDGE SANDRON: So -- so after you sent it up for review,
3 either to HR or to a supervisor, did -- did -- were you ever
4 involved in actually presenting it to an employee? Or you had
5 no further involvement?

6 THE WITNESS: I -- after it was written up, I did present
7 it to the employee so that they had the opportunity to read
8 it --

9 JUDGE SANDRON: Right.

10 THE WITNESS: -- and rebuttal. But after that, no.

11 Q BY MS. LANOUILLE: Were you responsible for checking the
12 documentation relative to patient care on the unit?

13 A The CNA care, do you mean?

14 Q Well, there's a lot of documentation, isn't there?

15 A There is a lot of documentation.

16 Q Did you check -- were you responsible to ensure that
17 medications were properly administered?

18 A No. Not that I'm aware of, no.

19 Q Checked the documentation of LPNs to ensure they were
20 administering care appropriately?

21 A Only when I was directed to by my director of nursing.

22 Q And did you check the acts -- the care that was being
23 provided by CNAs to ensure it was being provided -- provided
24 appropriately?

25 A No.

1 Q So you never filled out any quality assurance forms saying
2 that you had checked that documentation?

3 A No.

4 Q Did you par --

5 A Not that I'm aware of.

6 Q Did you participate in quality assurance meetings?

7 A No.

8 Q I think you said you went to Falls Meeting; is that right?

9 A Yes.

10 Q And Falls Meetings were unit managers?

11 A Yes.

12 Q Was part of the purpose of Falls Meetings quality
13 assurance for the building?

14 A You'll have to define quality assurance for the building
15 for me. Falls Meetings were just about that paperwork.

16 Q Okay. And what was that paperwork?

17 A So an incident and accident report, an I&A, has to be
18 filled out when somebody -- when something happens to someone.
19 In this particular case, if somebody falls on the floor, we had
20 paperwork that needed to be filled out. It did not necessarily
21 need to be filled out by nurse managers; it just needed to be
22 filled out by the nurse on that shift at that time. What Falls
23 was, was we were making sure that those -- that paperwork was
24 completed. And then we handed the paperwork back to the
25 director of nursing. And I don't know where it went from

1 there.

2 Q So you, as a unit manager, with your fellow unit managers,
3 were responsible to make sure the paperwork was appropriately
4 completed?

5 A Yes, so that the director of nursing didn't have to do it
6 by herself. Because in the end, it wasn't our name on the
7 paperwork. It was the director of nursing's name on the
8 paperwork.

9 Q Did you communicate policy to department heads relative to
10 the NBI unit?

11 MS. JOSLIN: What policy? Objection?

12 JUDGE SANDRON: Right, do you (audio interference).

13 Q BY MS. LANOUEETTE: Were you involved with policy settings
14 for the NBI unit?

15 MS. JOSLIN: Your Honor --

16 A I would --

17 MS. JOSLIN: -- I'm going to object.

18 JUDGE SANDRON: All right. Yeah, I know it's a little
19 difficult with the Zoom, but yeah, Ms. Golden, wait to answer
20 until -- you know, when there's an objection made, you know,
21 wait until I rule on it to see if you -- you know, if you have
22 to answer it.

23 THE WITNESS: Sorry.

24 JUDGE SANDRON: That's okay. It's just so we can keep
25 kind of things in -- in order. So do you understand the

1 question?

2 THE WITNESS: Not really, no.

3 JUDGE SANDRON: Maybe you can be more specific.

4 Q BY MS. LANOUE: Ms. Golden, let me show you what's been
5 marked as Respondent's 39 -- or sorry, 34. And ask if you
6 recognize this email. I'll move it up so you can read the
7 whole thing.

8 A What was the question?

9 Q Do you recognize this email?

10 A Yes. I mean, no, but yes. It says it's from me, so.

11 Q From you. And who's it to?

12 A It is to --

13 Q Let -- let me rephrase. What are the positions of the
14 people that this is sent to?

15 A So Gerry Brooks is the director of program specialists.
16 Simon Naccarato and Cathleen Quinn are program specialists.
17 Angie -- Andrea Dakins (sic passim) was the director of
18 recreational activities. Katherine Davies was a supervisor for
19 recreational activities. Janie Landerway, Sarah Byres,
20 Cathleen Ford were all staff for the adminis -- for activities.
21 And Marcos DeAbreau was the director of CSS. Kathy McCormick
22 was director of nursing. And Patrick Weir was the
23 administrator.

24 JUDGE SANDRON: Do you recall the circumstances of how
25 this came to be issued, if you recall?

1 THE WITNESS: Yes.

2 JUDGE SANDRON: Go -- go ahead. How did you happen to go
3 ahead and --

4 THE WITNESS: Andrea Dakins was making her rounds, came up
5 on the NBI unit to observe her staff and saw staff with their
6 cell phones out on the unit. She addressed it with the staff
7 and then she came to me and told me what she found.

8 JUDGE SANDRON: And what was her position again? It
9 was --

10 THE WITNESS: She was the director of recreational
11 activities.

12 JUDGE SANDRON: And I think we have the spelling already
13 in the record, don't we? Yes. Okay. So you -- you issued it
14 at her direction?

15 THE WITNESS: I issued it just to remind people that
16 they're not supposed to be using their cell phones on the unit
17 and for them to please remind their staff that they're not
18 supposed to be using their cell phones on the unit. And that
19 they're supposed to be signing out for breaks and for lunch so
20 that we are account -- we know where people are. It -- it was
21 a very dangerous unit and sometimes people could get locked
22 into a room with one of the neighbors and we needed to be
23 accountable for -- for people.

24 JUDGE SANDRON: So I -- I gather some of the people that
25 were residents or how you -- what -- what's the term you use

1 for them?

2 THE WITNESS: Neighbors.

3 JUDGE SANDRON: Neighbors were potentially violent?

4 THE WITNESS: Yes. Particularly at that time, yes.

5 MS. LANOUEETTE: Your Honor, at this time we would offer

6 R-34.

7 JUDGE SANDRON: Any objection?

8 MS. PENDER: No objection, Your Honor.

9 MS. JOSLIN: No objection.

10 JUDGE SANDRON: R --

11 MS. TUMINARO: No objection.

12 JUDGE SANDRON: Okay. I think we have no objection.

13 Respondent's Exhibit 34 is received.

14 **(Respondent Exhibit Number 34 Received into Evidence)**

15 Q BY MS. LANOUEETTE: Did you expect that employees would
16 follow the direction not to use their cell phones on the unit?

17 A Well, that's not just a unit policy; that's a building
18 policy. So yes, I expected employees in that building to not
19 use their cell phone while they were working because that was
20 the policy of the Northeast Center.

21 Q Were you able to exclude employees from your unit?

22 A No.

23 JUDGE SANDRON: When you say -- say exclude, do you
24 mean -- what -- what do you mean by exclude?

25 Q BY MS. LANOUEETTE: Ms. Golden, I'm going to show you

1 what's been marked as Exhibit R-41. And ask if you recognize
2 this email.

3 A I do, yes.

4 Q Okay. And who is Melanie Palmero?

5 A She was an RN in the (audio interference) that worked at
6 the Northeast Center.

7 Q Where did she work?

8 A At this time?

9 Q No, before this time.

10 A She worked on NBI. She was one of the RNs on NBI.

11 Q And how did she come to leave the center the first time?

12 A I believe she quit, but I -- I don't know the answer to
13 that. I'm not friends with Melanie, so I don't -- I don't
14 know.

15 Q Why did you send Exhibit 41?

16 A Because she was going to work back into the building
17 again, and there was an issue between her and one of the
18 neighbors on the unit with enabling and making his behaviors
19 worse. So at the direction of Carolyn Carchidi, the director
20 of nursing, I put this message out.

21 Q Did you expect that employees would -- and what was the
22 message that you were conveying in Exhibit 41?

23 JUDGE SANDRON: Well, I -- I think it speaks for itself.

24 MS. LANOUE: Okay.

25 Q BY MS. LANOUE: Did you expect employees to abide by

1 this requirement with regard to Ms. Palmero?

2 A Yes, I -- I did. I -- I -- can I note that employees and
3 Melanie did not follow those procedures and Melanie was
4 terminated for that?

5 Q So noted.

6 A And it was not me that terminated her. I was already
7 terminated be --

8 Q Ms. Golden, there's no question pending. Now, Ms. Golden,
9 did you believe you were being successful as a unit manager?

10 A I did. I -- I -- I thought that I was learning
11 progressively, yes.

12 JUDGE SANDRON: Did you wish to offer -- did you wish to
13 offer Respondent's Exhibit 41?

14 MS. LANOUEETTE: Yes, Your Honor. I will offer
15 Respondent's Exhibit 41. Thank you.

16 JUDGE SANDRON: I'll tell you what. You know, I
17 realize --

18 MS. LANOUEETTE: Do you want me to put it back up?

19 JUDGE SANDRON: Okay. I'll tell you what. I'll ask for
20 any objections. If nobody says anything, I'll assume there are
21 no objections so you don't have to keep saying no objections.
22 So if there are no objections, Respondent's Exhibit 41 is
23 received.

24 **(Respondent Exhibit Number 41 Received into Evidence)**

25 Q BY MS. LANOUEETTE: Ms. Golden, I'm going to show you

1 what's been marked as Exhibit 39. And ask if you recognize
2 this email. And unfortunately, I cannot put the whole thing on
3 the screen.

4 JUDGE SANDRON: You can't get the whole document on?

5 MS. LANOUE: I can get the text or the header but not
6 both.

7 JUDGE SANDRON: Well, you -- okay, I guess she can do it
8 in two --

9 MS. LANOUE: I mean --

10 JUDGE SANDRON: -- you can do it --

11 MS. LANOUE: -- I could ask Ms. --

12 JUDGE SANDRON: -- in two separate --

13 Q BY MS. LANOUE: Ms. Golden, is this an email from you?

14 A It looks like it, yes.

15 Q And is this email to the individuals listed there on the
16 to line?

17 A The -- the directors, the social work, director of
18 nursing, and the administrator, and Dr. Goldman (phonetic), the
19 psychiatrist.

20 Q And I will scroll up. Do you recognize the text of this
21 email?

22 A I -- I do, yes.

23 Q And what was the topic of this email?

24 A So this was a --

25 JUDGE SANDRON: All right. Well I -- I think it speaks,

1 you know, for itself, the topic, you know, whatever it says on
2 the -- the heading. So maybe you can go on with other --

3 Q BY MS. LANOUEETTE: Do you indicate in this email that
4 you're at your wit's end on what to do?

5 A Yes.

6 Q And that you believe that you've lost control of the unit?

7 JUDGE SANDRON: Well, I think it --

8 MS. JOSLIN: Objection.

9 JUDGE SANDRON: Yeah, I think it speaks for itself.

10 MS. LANOUEETTE: Okay. Offer Exhibit 39, R-39.

11 JUDGE SANDRON: All right. If there are no objections,
12 Respondent's Exhibit 39 is received.

13 **(Respondent Exhibit Number 39 Received into Evidence)**

14 Q BY MS. LANOUEETTE: Did Patrick Weir send you to a
15 supervisor's course?

16 A No, he did not.

17 Q Did you attend a supervisor's course in September of 2019?

18 A Yes, I did.

19 Q And how did you come to attend it?

20 A Patrick Weir came into morning report and announced that
21 we had just won some type of grant for staff education and
22 informed us that there would be a leadership training, not a
23 management training. It was for more than just managers. It
24 was a leadership training and asked if anyone wanted to go. I,
25 then, volunteered. I had to get permission from my director of

1 nursing because the particular day that it was on was a care
2 planning day and someone had to replace me for that day.

3 JUDGE SANDRON: Do you -- do you remember if anyone else
4 went to that at the same time?

5 THE WITNESS: I was the only one that went. I was the
6 only one that wanted to go.

7 JUDGE SANDRON: So as far as you know, no one else
8 volunteered to go?

9 THE WITNESS: Not from the Northeast Center, but there
10 were other people from other facilities at that meeting -- or
11 at that training.

12 JUDGE SANDRON: And -- and do you happen to know -- well,
13 I know you probably wouldn't have knowledge of this, but do you
14 know what their -- personal knowledge of what their positions
15 were?

16 THE WITNESS: Some were floor nurses, some were charge
17 nurses, some were nurse managers, some were supervisors.

18 Q BY MS. LANOUE: Ms. Golden, you indicated that the
19 employer told you to watch for activities that were not job-
20 related; is that right?

21 A Yes.

22 Q Weren't supervisors and managers and unit managers
23 supposed to watch for activities that were not job-related
24 anyway?

25 A Yes, but not on time off.

1 Q And you viewed it as time off because it wasn't your
2 regular schedule; is that right?

3 A Yes.

4 Q You are a salaried employee, right?

5 A Yes. I was, yes.

6 Q Sorry. You indicated staff and administrators were coming
7 on to the NBI unit when they had no purpose to be there. Who
8 was that, that was coming on, and had no purpose to be there?

9 A They were other unit managers --

10 Q Who?

11 A -- and directors. I don't remember. Sorry. A lot of
12 times I wasn't even present when they came on. So I would be
13 told by the staff that such-and-such slid through.

14 JUDGE SANDRON: All right. Why -- why don't you just
15 limit it to who you observe -- you know, what you observed, not
16 what people told you.

17 THE WITNESS: Okay.

18 Q BY MS. LANOUE: Well, ha -- having said that, I'm --
19 isn't it true that supervisors, directors from various
20 departments, do come on your unit, I think you said, to check
21 on the staff?

22 A Yes. To check on their staff, yes.

23 JUDGE SANDRON: Well, I guess the question is, did you see
24 those people in those positions come onto -- to the unit when
25 they did not have those responsibilities? Did you actually

1 observe that?

2 THE WITNESS: Yes.

3 JUDGE SANDRON: I mean, do you remember -- you don't
4 remember names, but do you remember how many of such
5 individuals you --

6 THE WITNESS: No.

7 JUDGE SANDRON: -- personally observed? Was it -- was it
8 more than one, if you can say, or was it two, three? Just, you
9 know, best as you can recall, if you can.

10 THE WITNESS: I -- I don't remember, to be honest with
11 you.

12 MS. LANOUEETTE: Your Honor, if I may have one minute to
13 confer with my client, I think I may be done.

14 JUDGE SANDRON: Yes. So we -- we can just go off for --
15 just go off for a couple minutes.

16 MS. LANOUEETTE: That's fine.

17 JUDGE SANDRON: That's fine. When you're ready, just let
18 us know. So we'll stop just for a moment.

19 (Off the record at 1:46 p.m.)

20 MS. LANOUEETTE: We are back, Your Honor.

21 JUDGE SANDRON: Okay.

22 MS. LANOUEETTE: And no, I have no further questions.

23 JUDGE SANDRON: Redirect?

24 MS. PENDER: Yes, Your Honor, briefly. Okay.

25 JUDGE SANDRON: I --

REDIRECT EXAMINATION

1

2 Q BY MS. PENDER: Ms. Golden --

3 JUDGE SANDRON: I see we have Mr. Eskenazi from -- I --
4 I'm sorry if I got you -- said it too fast, but we have Mark
5 Eskenazi --

6 Did I pronounce that right?

7 MR. ESKENAZI: You got it, Judge. Yes.

8 JUDGE SANDRON: I'm -- I'm used to calling you Mark --
9 who's joining us from the Executive Secretary's Office.
10 Welcome.

11 MR. ESKENAZI: Thank you.

12 JUDGE SANDRON: Direct -- redirect?

13 MS. PENDER: Yes, Your Honor.

14 Q BY MS. PENDER: Ms. Golden, in your time as NBI unit
15 manager, did you ever hire any employees?

16 A No, I did not.

17 Q Did you have the --

18 MS. LANOUEETTE: Objection, Your Honor, outside the scope
19 of direct.

20 JUDGE SANDRON: Well, I -- I think the issue of
21 supervisory status has been part of the matters at issue,
22 correct? I mean, I -- I believe that's one of the issues;
23 isn't it?

24 MS. PENDER: That's correct, Your Honor.

25 JUDGE SANDRON: That's true, isn't it, Ms. Lanouette, that

1 this is --

2 MS. LANOUE: It is, but there were no questions on
3 cross about these topics outside of discipline and evaluations.

4 JUDGE SANDRON: Well, I -- I --

5 MS. LANOUE: And -- on the unit.

6 JUDGE SANDRON: Well, I think, though, that it -- the
7 matter was raised on -- you know, the broader issue of
8 supervisor was raised on direct, and you asked questions that
9 went to that on cross. So I'll allow further questions that go
10 to the issue of supervisory status.

11 Go ahead, Ms. Pender.

12 MS. PENDER: Thank you, Your Honor.

13 Q BY MS. PENDER: Ms. Golden, did -- were you ever told you
14 had the authority to hire employees?

15 A No, I was not.

16 Q Did you ever participate in any job interviews of
17 prospective employees?

18 A No, I did not.

19 Q Did you ever make a recommendation that the Employer hire
20 someone?

21 A No, I did not.

22 MS. HAMMONDS: Excuse me, Judge. We have Kelly Leonard in
23 the waiting room.

24 MS. PENDER: She's going to be the General Counsel's next
25 witness.

1 MS. HAMMONDS: Okay. I'll just leave her there. Thank
2 you.

3 JUDGE SANDRON: Thank you, Ms. Hammonds.

4 Q BY MS. PENDER: Ms. Golden, did you have the authority to
5 transfer employees?

6 A No, I did not.

7 JUDGE SANDRON: Did you have any role in overtime if that
8 came up? Overtime, authorizing overtime?

9 THE WITNESS: No, I did not.

10 JUDGE SANDRON: And I -- I -- or granting -- I think I
11 asked you, but granting leave, did you have any role in that,
12 leave requests --

13 THE WITNESS: No, I did not.

14 JUDGE SANDRON: Or vacations?

15 THE WITNESS: No, I did not.

16 Q BY MS. PENDER: Did you ever suspend any employee?

17 A No, I did not.

18 Q Did you have the authority to do so?

19 A No, I did not.

20 Q Did you ever discharge any employee?

21 A No, I did not.

22 Q Did you have the authority to do that?

23 A No, I did not.

24 Q Did you ever grant anyone a promotion?

25 A No, I did not.

1 Q Did you have the authority to do that?

2 A No, I did not.

3 Q Did you ever award anyone a wage increase?

4 A No, I did not.

5 Q Did you have the authority to do that?

6 A No, I did not.

7 Q Did you ever recommend that someone should get a wage
8 increase?

9 A Yes, a whole department.

10 Q And did anything come of your efforts to advocate for
11 that?

12 A No, it did not.

13 JUDGE SANDRON: So -- so that -- that was a recommendation
14 that everybody receive a -- an increase?

15 THE WITNESS: Yes, everybody that came to the unit.

16 Q BY MS. PENDER: Did you ever grant anyone a bonus?

17 A No, I did not.

18 Q Did you have the authority to do that?

19 A No, I did not.

20 JUDGE SANDRON: And who -- who was your immediate
21 supervisor, you know, the person to whom you reported yourself?

22 THE WITNESS: The supervisor of the building?

23 JUDGE SANDRON: Well -- well, who -- who did -- who -- who
24 did you consider to be your supervisor? You know, to --

25 THE WITNESS: So my supervisor was the -- the supervisor

1 of the facility. Then it went the assistant director of
2 nursing, then it went the director of nursing, and then it went
3 the administrator.

4 JUDGE SANDRON: And -- and what -- what was the name again
5 of the immediate supervisor that you had?

6 THE WITNESS: At the time, it was Robin Fairley.

7 JUDGE SANDRON: Can we get the spelling of that?

8 MS. PENDER: I believe it's R-O-B-I-N. Last name,
9 F-A-I-R-L-E-Y.

10 JUDGE SANDRON: Thank you.

11 MS. PENDER: Thank you. And I have no further questions,
12 Your Honor.

13 JUDGE SANDRON: Okay. Is -- Ms. Joslin or Ms. Williamson,
14 any further questions?

15 MS. JOSLIN: No questions, Your Honor. Thank you.

16 JUDGE SANDRON: And Ms. Tuminaro, any further questions?

17 MS. TUMINARO: No questions, Your Honor. Thank you.

18 JUDGE SANDRON: And Ms. Lanouette, anything further?

19 MS. LANOUEETTE: One question, Your Honor.

20 **RECROSS-EXAMINATION**

21 Q BY MS. LANOUEETTE: With regard to overtime, you could
22 direct staff to stay, if you needed them to, to cover, couldn't
23 you?

24 A I could direct them to the nursing supervisor or the
25 staff -- the scheduler.

1 MS. LANOUE: That's all I have.

2 JUDGE SANDRON: Okay. Well, thank you, Ms. Golden.

3 You're excused as a witness. You're -- as I said earlier,
4 you're welcome to continue to participate. Possibly you may be
5 recalled at a later point.

6 THE WITNESS: Can I ask a question?

7 JUDGE SANDRON: Yes.

8 THE WITNESS: Will I -- will I get notification of the
9 call? Because we're on Zoom, so it's not like I'm in the
10 courtroom.

11 JUDGE SANDRON: Right. Yes, I -- I believe if -- if
12 there's -- if you're recalled by Ms. Pender, she -- she'll let
13 you know. And again, you're welcome to stay or not. You know,
14 you -- you have counsels here, so it's up to you, but you're
15 welcome to stay or wait to be on call.

16 THE WITNESS: Okay. Thank you.

17 JUDGE SANDRON: Okay.

18 MS. PENDER: Thank you.

19 JUDGE SANDRON: So Ms. Pender, do you have your next
20 witness?

21 MS. PENDER: Yes, Your Honor. The General Counsel would
22 like to call Kelly Leonard.

23 JUDGE SANDRON: Okay.

24 MS. HAMMONDS: Okay. I'll let her in now.

25 MS. PENDER: Thank you.

1 JUDGE SANDRON: I believe the -- Ms. Leonard has --

2 MS. PENDER: She's --

3 JUDGE SANDRON: -- joined us by audio, but -- but we
4 cannot see her.

5 MS. LANOUEETTE: Respondent objects.

6 MS. PENDER: Oh, here she is --

7 JUDGE SANDRON: There's no video.

8 MS. PENDER: -- just had to turn her camera on.

9 MS. LEONARD: Sorry.

10 JUDGE SANDRON: Okay, there she is. Okay. We need to see
11 you as well. Hi -- hi, Ms. Leonard. This is Judge Sandron.
12 I'm the judge in this proceeding. So I'm going to go ahead and
13 swear you in. So if you'll --

14 MS. LEONARD: Okay.

15 JUDGE SANDRON: So if you'll please raise your right hand.
16 Whereupon,

17 **KELLY LEONARD**

18 having been duly sworn, was called as a witness herein and was
19 examined and testified as follows:

20 JUDGE SANDRON: Okay. If you'll please state and spell
21 your full and correct legal name for the record and provide us
22 with an address.

23 THE WITNESS: Sure.

24 JUDGE SANDRON: Oh, you can lower your hand. That's fine.

25 THE WITNESS: Okay. Kelly Leonard,



1 K-E-L-L-Y L-E-O-N-A-R-D. And my address is 81 Broad Street,
2 West Hurley, New York 1301.

3 JUDGE SANDRON: Okay. Thank you.

4 **DIRECT EXAMINATION**

5 Q BY MS. PENDER: Good afternoon, Ms. Leonard. I have some
6 questions for you this afternoon. If at any time you can't
7 hear me or you don't understand my question, please let me
8 know. I'm happy to ask it again. Because the court reporter
9 is taking a transcript, you do need to give verbal answers, yes
10 or no. You can't nod or shake your head. Because we're on
11 Zoom and there's a bit of a lag, I will ask you to let me get
12 my full question out before you answer it. And I'll do you the
13 same courtesy; I'll let you get your full answer out before I
14 ask my next question. Okay?

15 A Okay.

16 Q Ms. Leonard, are you familiar with Northeast Center for
17 Rehabilitation and Brain Injury?

18 A Yes.

19 Q If I refer to it as Northeast, will you know what I'm
20 referring to?

21 A Yes.

22 Q And how are you familiar with Northeast?

23 A I was currently a LPN there for 15 years.

24 Q And did there come a time when you stopped working at --
25 at Northeast?

1 A Yes.

2 Q When was that?

3 A January 3rd of 2020.

4 Q And why did you stop working there?

5 A The situation became really uncomfortable working there.

6 I felt that my license was at jeopardy. It was just really

7 uncomfortable having to deal with department heads constantly

8 harassing me and trying to intimidate me to the point where I

9 just felt really uncomfortable.

10 Q Did you voluntarily --

11 MS. LANOUEETTE: Objection, Your Honor.

12 JUDGE SANDRON: I think --

13 MS. LANOUEETTE: Object to the characterization. She can

14 say what she --

15 JUDGE SANDRON: Well -- well, I think she's testifying

16 about her state of mind, so I -- I think she can do that. You

17 know, we're not going to -- we're not going to draw any

18 conclusions about the truth of what she's stating as far as the

19 environment, but that's her opinion or her view. So she can

20 state that.

21 Go ahead.

22 MS. PENDER: Okay.

23 Q BY MS. PENDER: And what -- I guess, how did you stop

24 working there? Was it voluntary?

25 A Yes.

1 Q When you worked at Northeast, were you an LPN the whole
2 time you worked there?

3 A I was a CNA for three years, and then I became an LPN and
4 stayed currently working there.

5 Q And as an LPN, what were your job duties?

6 A Distributing medications, doing treatments, patient care,
7 doing doctor rounds.

8 Q And what unit did you work on?

9 A NRP5.

10 Q Did you know what --

11 JUDGE SANDRON: Wait, wait. What was that -- you need to
12 go a little slower. What -- what were the initials?

13 THE WITNESS: NRP5.

14 JUDGE SANDRON: NRP5. And what did the NRP stand for?

15 THE WITNESS: Neurobehavioral -- I'm not really sure --

16 JUDGE SANDRON: All right.

17 THE WITNESS: -- to be honest with you.

18 JUDGE SANDRON: All right. That -- that's fine.

19 Q BY MS. PENDER: Ms. Leonard, are you familiar with 1199
20 SEIU United Healthcare Workers East?

21 A Yes.

22 Q If I refer to that organization as the Union, will you
23 know what I'm referring to?

24 A Yes.

25 Q How are you familiar with the Union?

1 A I met the Union back in June, and I was trying to organize
2 a Union.

3 Q Now, when you say --

4 JUDGE SANDRON: And that was what year? What year?

5 THE WITNESS: In 2019.

6 Q BY MS. PENDER: How did you get involved in the Union
7 organizing?

8 A My coworkers had came to me and asked if I was interested
9 in joining the Union or trying to organize Union activity, and
10 I stated, yes.

11 Q Do you remember which coworkers?

12 A Cathy Todd and Maribel.

13 Q And why did you get involved in the Union organizing?

14 A I just wanted to have better working conditions; some real
15 benefits. The current benefits that we had, they were just
16 taking them out of our paychecks but weren't actually giving us
17 our true benefits. And raises. We haven't had raises in
18 years.

19 JUDGE SANDRON: Who were the -- who was the first employee
20 you mentioned? The name?

21 THE WITNESS: Cathy Todd.

22 JUDGE SANDRON: And -- and the other one?

23 THE WITNESS: Maribel.

24 JUDGE SANDRON: Do -- do you know her last name?

25 THE WITNESS: I don't.

1 JUDGE SANDRON: All right.

2 MS. PENDER: And the -- the spelling on Cathy Todd,
3 C-A-T-H-Y T-O-D-D.

4 JUDGE SANDRON: Thank you.

5 THE WITNESS: Correct.

6 Q BY MS. PENDER: Ms. Leonard, what actions, if any, did you
7 take in support of the Union organizing campaign in June of
8 2019?

9 A I would meet with the Union reps and other employees to
10 discuss what we could do to try to organize for the Union.

11 Q Where would you meet them?

12 A We'd meet either at the diner or at the local pizza place.

13 Q What was the name of that pizza place?

14 A Angela's Pizzeria.

15 Q And where is it?

16 A In Lake Katrine.

17 Q And when -- when you met with -- with Un -- the Union and
18 coworkers at -- at the diner and pizza place, about how many
19 people attended those meetings?

20 A It ranged anywhere from three to ten people. It just
21 depended on people's availability.

22 Q And how long did you attend those meetings? What I mean
23 is can you give me a -- like, a time frame of months, when you
24 started to when you stopped attending those meetings?

25 A June of 2019 to roughly November of 2020.

1 Q What other actions, if any, did you take in support of the
2 Union?

3 JUDGE SANDRON: When did you resign again?

4 THE WITNESS: January 3rd.

5 JUDGE SANDRON: Of?

6 THE WITNESS: 2020.

7 JUDGE SANDRON: So those meetings were from about June to
8 November of 2019?

9 THE WITNESS: Yes.

10 Q BY MS. PENDER: Okay. So you didn't continue attending
11 those meetings throughout 2020?

12 A Oh, no. Sorry.

13 Q Okay, okay. Thank you.

14 MS. PENDER: Thank you, Your Honor.

15 Q BY MS. PENDER: Aside from attending meetings, Ms.
16 Leonard, any other activities that you participated in on
17 behalf of the Union?

18 A Yes. We tried to -- the Union and a couple of coworkers
19 tried to do a -- a Union organization in the parking lot to try
20 to educate the employees about what the Union consists of.

21 Q Do you remember when that took place?

22 JUDGE SANDRON: I -- I tell you what. Before you go on,
23 about how many times were those meetings held at the -- either
24 of the two restaurants? You know, about how many total
25 meetings were there, you know, as best as you can recall, over

1 that, what I think is about six-month period, five to six
2 months?

3 THE WITNESS: I would say probably around eight -- eight
4 times, eight to ten times.

5 JUDGE SANDRON: And -- and were they equally divided --
6 fairly equally divided between the two restaurants, or was
7 more -- were more meetings held at one than the other?

8 THE WITNESS: We -- the first meeting that we ever got
9 together, it was only a one time at the Port Ewen Diner. And
10 then from there on out, it was just easier for everybody to go
11 to the pizzeria. It was a lot closer for everybody.

12 JUDGE SANDRON: Okay. Thank you.

13 Q BY MS. PENDER: What kind of -- what kind of parking lot
14 action were you referring to, Ms. Leonard?

15 A We were trying to educate employees on what exactly the
16 Union was and try to hand out Union cards, to get people to
17 sign up for the Union, to come to some meetings, to try to
18 educate themselves and just see what the Union was all about.

19 Q And that -- why were you in the parking lot for the -- for
20 that?

21 A That was the first time that we went to the parking lot,
22 just to make our first broadcast.

23 Q About how many times did you do that, attend that kind of
24 activity in the parking lot?

25 A It was only once in the parking lot. And then after that,

1 we had to go to the edge of the -- the road and the driveway.

2 Q And how many times did you engage in that activity on --
3 in the driveway or on the edge of the road?

4 A Multiple times.

5 Q Do you have a ballpark between June and November, about
6 how many times?

7 A Five, six times.

8 JUDGE SANDRON: And -- and you say you ha -- you had to
9 change the location. Why -- why was that?

10 THE WITNESS: The first time when we had went to the
11 parking lot, the administrator's secretary came out to the
12 parking lot and confronted us and asked why we were in the
13 parking lot and what we were doing. She then replied that we
14 all knew better for being there. And she called the police on
15 us, to have us escorted off the property, and then she had
16 another coworker take his car and block the driveway so that no
17 one could leave or enter.

18 JUDGE SANDRON: And who is this? What was her name,
19 this --

20 THE WITNESS: Julie Cole.

21 JUDGE SANDRON: Okay. I think we have her spelling on the
22 record. Don't -- don't we have a spelling? I believe --

23 MS. PENDER: We do. We do, Your Honor.

24 Q BY MS. PENDER: Ms. Leonard, do you remember the name of
25 the person who blocked traffic with his car?

1 A Marcos DeAbreau.

2 Q Thank you.

3 JUDGE SANDRON: Can we get -- do we --

4 MS. PENDER: We have that. Yeah.

5 JUDGE SANDRON: And -- and who was he? Who was he?

6 THE WITNESS: He's the head of the safety, CSS.

7 JUDGE SANDRON: And -- and we have his title already in
8 the record?

9 MS. PENDER: Yes, Your Honor. Yeah.

10 Q BY MS. PENDER: Ms. Leonard, any other actions that you
11 undertook in support of the Union organizing effort at
12 Northeast?

13 A No.

14 Q I'm going to direct your attention to November 12th of
15 2019. Can you tell me what, if anything, happened on that day?

16 A I went in to work at 3:00, and I was about to count off
17 with the off-going nurse and --

18 Q Let me ask you this, Ms. Leonard. Was it 3:00 a.m., p.m.?

19 A P.M.

20 Q And what were you scheduled for that day?

21 A 3 to 11.

22 Q P.M.?

23 A Uh-huh. Yes.

24 Q Thank you. Okay, you can continue. What happened?

25 A Around 3:15, one of my other coworkers received a phone

1 call from Julie Cole, stating that I had to go see her at her
2 office. So I didn't get a chance to get report or to count off
3 with the other nurse; I had to go right away. So I went to her
4 office, which is in the administrative suite, and she wasn't in
5 her office. I asked one of the other women that worked there
6 if I knew -- if she knew had -- where she was, and she said to
7 check the meeting room. So when I went over to the meeting
8 room, the door was shut. I knocked on the door and was told to
9 enter. And when I walked --

10 Q Let me -- let me -- let me just stop you at this. What --
11 what conference room are you referring to?

12 A It's the meeting room in the administrative suite.

13 Q Okay. And -- okay. What happened next?

14 A When they said that I could come in, I opened up the door.
15 And there was a whole room full of people, nine people,
16 approximately. And --

17 Q Who -- tell me to the best of your re -- recollection the
18 names and titles of the people who were there.

19 A Sure. It was Carolyn Carchidi, who is the director of
20 nursing. It was Julie Cole, which is the administrative
21 secretary in medical records; Steve Winters, who's the head of
22 housekeeping; John Walters, (sic) who's the head of
23 maintenance; Andrew -- I don't know his last name -- who's the
24 assistant of human resources; and then four other people,
25 Keith, Linda, and Aubrey, and Mike. They were, what I had

1 known at the time, I thought were corporate.

2 JUDGE SANDRON: Who was that mul -- was multi -- there was
3 a name you mentioned. I don't think I have that one. The
4 maintenance supervisor.

5 MS. PENDER: John Walters [sic].

6 JUDGE SANDRON: Oh, Walter. And there -- and there was
7 one other name that -- or maybe --

8 THE WITNESS: Dave Winters.

9 JUDGE SANDRON: Okay, I guess we have everybody. Okay. I
10 just wanted to make sure I have them. Okay. Okay, we're all
11 set.

12 Q BY MS. PENDER: And what happened -- what happened in that
13 meeting, Ms. Leonard?

14 A They asked me to come in. I was set in the middle, and
15 the rest of them all surrounded around me. And they asked
16 me -- they introduced me to this man named Keith. I don't know
17 his last name. And he said, do you know why you're here? I
18 said, no. He said, well, we know who you are. And I said,
19 okay. And then he proceeded to pull out a employee badge
20 picture of mine -- it was about an eight-by-ten picture -- out
21 of a folder, and stated, well, we know who you are, and we have
22 four statements of you harassing the housekeepers, and we also
23 have you on video.

24 Q And did he say harassing the housekeepers about what?

25 A About Union activity.

1 Q Did you respond to him?

2 A I stated, I don't know what you're talking about, but I
3 didn't do that. I don't even know the housekeepers. And he
4 then directed it to Steve Winters, which is in charge of
5 housekeeping. And Steve said that he had four staff members
6 come to him, and they feel uncomfortable coming to work and
7 threatened by me; that I was forcing the Union on them. And I
8 told them that I didn't do such a thing. And John Walters
9 (sic) from maintenance said that, well, we have you on video,
10 Kelly. So I had looked at Keith and said, well, then, I'd like
11 to see the footage and the statements then, and he told me in a
12 really nasty, condescending voice that I'm not going to see
13 anything.

14 Q I'm just going to say --

15 MS. LANOUE: Object to the characterization --

16 Q BY MS. PENDER: -- Say what --

17 JUDGE SANDRON: Well, what --

18 MS. PENDER: Yeah.

19 JUDGE SANDRON: Right.

20 Q BY MS. PENDER: Just state what people said as opposed to
21 how -- how they said it, okay?

22 JUDGE SANDRON: Right. I mean, you -- you can say if
23 someone spoke loudly or -- but not -- not try to characterize
24 the tone of the -- of what they said.

25 THE WITNESS: Okay.

1 Q BY MS. PENDER: And so what happened next, Ms. Leonard?

2 A I asked to see the footage and the statements. He said
3 that I wasn't going to be able to see any of that. He then
4 directed it and asked Andrew if there was anything that he
5 wanted to add. Andrew said that he wasn't sure what we were
6 going to do; that they were going to have to contact the third-
7 party administration corporate about what to do with me since I
8 was harassing their staff. And I told them I don't -- you
9 know, I declined, I don't know what you're talking about. And
10 Keith then said that I was a despicable nurse and this is
11 absolutely despicable, that I'm supposed to be a professional,
12 and that I would have time to harass people about Union
13 activity. I told him that I didn't do any of that. And he
14 proceeded to tell me that he's not sure if the Union told me
15 this or not, but I was allowed to participate in Union
16 activity, not on corporate time, and that he -- that they can't
17 protect my license. And I asked him, are you threatening my
18 nursing license? And he said, that's not what I'm saying. And
19 everybody in the room stated, that's not what he said. But I
20 asked him, so why did you bring that up? And he said, I'm just
21 letting you know.

22 Q Ms. Leonard, when he said they couldn't protect your
23 license, do you know who he meant by they?

24 A The Union --

25 MS. LANOUE: Objection. Speculation.

1 JUDGE SANDRON: Well, I think she asked if she -- if she
2 knows. If not, she can't answer.

3 A He was re -- he -- he was referring to the Union.

4 Q BY MS. PENDER: How do you know that?

5 A Because he stated, do you know that the Union can't
6 protect you against your licensing board.

7 Q Anything else you can recall from that meeting, Ms.
8 Leonard?

9 A He asked if I had participated in asking any of the
10 patients or their families in the Union activity, and I said
11 no, I did -- wouldn't do that, that's not professional. I
12 said, are you accusing me of that? He said, no, I'm just
13 asking. So --

14 Q And who is "he" that you -- who --

15 A Keith.

16 Q Anything else?

17 A He asked me if I would write a statement, then, if I felt
18 that all these employees that had wrote statements were lying.
19 If he were to call them in the room right now and confro --
20 if -- would I confront them, and I said yes, I would, because
21 they're lying. And he said, well, good, then I want you to
22 write a statement. And he proceeded to take a piece of paper,
23 Keith, and a pen and throw it across the table at me. And
24 that's when I changed my mind and I didn't feel comfortable
25 writing it.

1 Q And what else happened?

2 A I just -- I asked if the meeting was over. And he said,
3 well, we're going to have to figure out what we're going to do
4 with you because of it being another company with the
5 housekeeping. And I had asked if I could leave the meeting.
6 And they said, yeah, we'll be in contact with you because this
7 investigation's not over. And I asked, well, if this -- when
8 did this supposedly take place? And he said, a couple of weeks
9 ago. And I asked, well, why are you just bringing me to the
10 office about this now? I've never been in any type of trouble.
11 And he said, do you not know what an investigation is? And I
12 said, yeah, I do know what an investigation is. And then I --
13 I didn't know what else he wanted from me. He just kept, like,
14 asking me different random questions, and I didn't understand,
15 like, if it was pertaining to me. And I asked him, and he
16 said, no, I'm just asking the questions.

17 Q About how long did that meeting last?

18 A Half hour to 45 minutes.

19 JUDGE SANDRON: Do you -- do you remember how -- how the
20 meeting ended?

21 THE WITNESS: I just asked if -- if we were done and can I
22 leave. And he said, yes. And I had left the meeting and went
23 back my unit that I worked and told my coworker that I needed
24 to walk on and take a few minutes.

25 JUDGE SANDRON: Again, you said something about

1 housekeeping being a separate company, I thought. Did you --
2 can you explain what you --

3 MS. PENDER: Your Honor --

4 MS. HAMMONDS: I can't hear you, Judge.

5 MS. PENDER: -- I'm losing your audio.

6 JUDGE SANDRON: Oh. Let me put this over here. Can you
7 hear me now?

8 MS. PENDER: Yes.

9 MS. HAMMONDS: Yes.

10 JUDGE SANDRON: Okay. Did -- did -- you said something
11 about the housekeeping -- you re -- was referenced was a
12 separate company. Do you -- did I get that right?

13 THE WITNESS: It's a third -- it's a third-party company.
14 Like, the -- the employees aren't hired directly through the
15 Northeast Center; they're hired through a different company.

16 JUDGE SANDRON: I --

17 THE WITNESS: But they work for the Northeast Center.

18 JUDGE SANDRON: Are they, like, a -- a -- like, under
19 contract?

20 THE WITNESS: I -- I --

21 JUDGE SANDRON: If you know.

22 THE WITNESS: I honestly don't --

23 JUDGE SANDRON: Don't -- don't -- if you know. If you
24 don't --

25 THE WITNESS: Yeah, I'm not sure.

1 Q BY MS. PENDER: Okay. Ms. Leonard, what -- what, if
2 anything, did you ask -- did you do after leaving that meeting?

3 A After I left the meeting, I was so upset and just
4 distraught that I went to the unit and I told my coworker that
5 I need to walk on for a few minutes and get some fresh air to
6 try to pull myself together, because I've never been treated in
7 such an unprofessional, disrespectful way, and I was just
8 really upset. I went outside to my car, and I called the Union
9 rep and explained to them what had happened. And I then went
10 back inside after a few minutes, and when I walked in the door,
11 Keith was standing by the door when I walked in.

12 Q Did he say anything to you?

13 A He didn't.

14 Q After that November 12th, 2019 meeting, when -- did you
15 have any interactions with department heads or managers that
16 stuck out to you?

17 A Yes.

18 MS. LANOUE: Objection, Your Honor, in what way?

19 Q BY MS. PENDER: As unusual from your typical experience?

20 A Yes.

21 Q Tell me about those.

22 JUDGE SANDRON: How many? All right. Well, I think --
23 well, how -- how -- do you recall how many of those there were?
24 You know, then we can go one by one, if --

25 THE WITNESS: It lasted from October to -- right on up

1 until the day that I quit.

2 JUDGE SANDRON: Well, maybe you need to cover them in
3 general and then see if she remembers specifics. Because
4 other -- it might be hard for her to, you know, testify --

5 MS. PENDER: Right.

6 JUDGE SANDRON: -- one by one, if --

7 MS. PENDER: Right.

8 JUDGE SANDRON: -- there's a lot -- so many of them.

9 MS. PENDER: Right.

10 Q BY MS. PENDER: So Ms. Leonard, tell me generally what
11 those interactions were like.

12 A Every day when I would come to work at 3 p.m., there would
13 be department heads standing by the time clock when we went to
14 punch in, and they would just stand there and either look for
15 things or just say, hi, and then that would be it. And then at
16 the -- between 9 p.m. and 10 p.m., every night, there would be
17 two to three department heads that would walk through every
18 single night on the different units and walk through and either
19 talk to us and ask us if we needed anything or just walk
20 through. It was just really odd because the people that came
21 in at that hour are normally people that work dayshift, and
22 they were department heads. So I don't really understand what
23 they were going to do to help me when I was by myself, doing 40
24 people on a med cart with two CNAs. They couldn't help pass
25 meds, they couldn't do treatments, and they couldn't do patient

1 care. So I -- I wasn't really sure what they would want to
2 help with at that hour, when I --

3 Q Do you have any recollection of any specific dates that --
4 that stick out to you that people did that type of thing?

5 A I don't. I just -- I know that it started around the end
6 of October to January.

7 JUDGE SANDRON: And was -- was it -- about how many times
8 a week would you say you observed that?

9 THE WITNESS: It was every day.

10 JUDGE SANDRON: And do you --

11 THE WITNESS: Minus the weekends.

12 JUDGE SANDRON: And do you remember any specific
13 individuals who did that?

14 THE WITNESS: Yes.

15 JUDGE SANDRON: Well, what --

16 THE WITNESS: It was --

17 JUDGE SANDRON: Go ahead.

18 THE WITNESS: -- the head of maintenance. It would be the
19 head of housekeeping, unit managers, dietary -- just random
20 department heads. Respiratory.

21 Q BY MS. PENDER: And are those people who would typically
22 come onto your unit in their normal course of -- of duties?

23 A No.

24 Q At this point, Ms. Leonard, I'd like to direct your
25 attention to December 20th of 2019. Were -- did you work that

1 day?

2 A Yes.

3 Q What hours did you work on that day?

4 A 3 p.m. until 11 p.m.

5 Q And tell me what, if anything, happened that day.

6 A I was -- I received a phone call from one of my coworkers
7 from a different unit, stating that there was a paper about me
8 and some of my other coworkers at the front desk. I went down
9 to the front desk to see what that was about. And there was
10 a -- a stack of papers with my name on it and a couple other
11 employees about the Union activity and that -- it was on -- on
12 top of a basket where we normally get our paychecks from. So
13 you would have to lift the stack of papers in order to get your
14 paycheck.

15 Q Okay. I'm going to share my screen. Ms. Leonard, I'm
16 showing you what has been marked as General -- or as Joint
17 Exhibit 6.

18 JUDGE SANDRON: Actually, it's been received, so it's an
19 exhibit.

20 MS. PENDER: I'm sorry?

21 JUDGE SANDRON: If it -- if it's been received, it's --
22 you -- it's not marked.

23 MS. PENDER: Right. That's right. Yes. I'm --

24 JUDGE SANDRON: It's an exhibit.

25 MS. PENDER: That's right. Thank you.

1 Q BY MS. PENDER: This is -- is -- is Joint Exhibit 6. I'm
2 going to just scroll through slowly. Is this the -- the paper
3 that you saw --

4 A Yes.

5 Q -- that -- on the 20th? Did you ever see that -- that
6 same letter anywhere else that night?

7 A Yes. It was around 3:15, 3:30, when I saw that letter
8 posted at the front desk. And within an hour, it was posted on
9 our bulletin board by the back patio, which is where --

10 Q Can you --

11 A -- our time clock is.

12 Q How do you know that it was -- it was there?

13 A I saw it.

14 Q And is that the only time clock that employees use?

15 A Majority of the staff use that time clock. Maintenance
16 and housekeeping use the time clock in the back of the
17 building.

18 Q And how was the letter posted in -- by the time clock?

19 A It was inside the glass cabinet, bulletin board. It's a
20 locked bulletin board, and it was posted there.

21 Q Ms. Leonard, I'm going to show you what has been marked as
22 General Counsel Exhibit 2. Do you recognize this?

23 A Yes.

24 Q What is this?

25 A That's the glass bulletin board that's posted above the

1 time clock.

2 Q Is this a photograph of the bulletin board?

3 A Yes.

4 Q And who took this photograph?

5 A I did.

6 Q Do you remember about when you took it?

7 A It was the day that the letter was posted. That was
8 before and the after.

9 Q And is this photograph -- is this a true and accurate copy
10 of the photograph that you took?

11 A Yes.

12 Q Was it altered in any way?

13 A That letter was posted in that bulletin board --

14 Q I mean after you -- after you took this photograph, was it
15 altered in any way? Was the photograph itself altered?

16 A No. No.

17 MS. PENDER: Okay. Your Honor, I offer General Counsel
18 Exhibit 2.

19 JUDGE SANDRON: Any voir dire on the document?

20 MS. LANOUE: No, Your Honor.

21 JUDGE SANDRON: Any -- any objections? If there are no
22 objections, then General Counsel Exhibit 2 is received.

23 **(General Counsel Exhibit Number 2 Received into Evidence)**

24 Q BY MS. PENDER: And next, Ms. Leonard, I'm going to show
25 you what has been marked as General Counsel Exhibit 3. Do you

1 recognize this photograph?

2 A Yes.

3 Q And what is this?

4 A That's the letter that was posted, that was in --

5 Q And where -- and where was the letter posted?

6 A It was posted at -- in the -- inside the glass bulletin
7 board by --

8 Q And who took --

9 A -- the time clock.

10 Q And who took this photo?

11 A I did.

12 Q And is this a true and accurate representation of the
13 photo you took?

14 A Yes.

15 Q And after you took this photo, was it altered in any way?

16 A No.

17 Q And when did you take this photo?

18 A The day that it was posted.

19 MS. PENDER: Your Honor, I move to admit General Counsel
20 Exhibit 3.

21 JUDGE SANDRON: If -- if there are no objections, General
22 Counsel's Exhibit 3 is received.

23 **(General Counsel Exhibit Number 3 Received into Evidence)**

24 Q BY MS. PENDER: Okay. I'm going to stop sharing my
25 screen. Did you ever talk to any coworkers about this letter,

1 the -- the Joint Exhibit 6, the December 20th, 2019 letter?

2 A Yes.

3 Q Why?

4 A Some of the coworkers came up to me really upset that
5 administration would post something like that. And --

6 Q What did you say to them when they -- when they talked to
7 you about it?

8 A I was upset about it too. There was nothing that I can
9 do. It was out of my hands. I didn't post that. It's in a
10 locked cabinet that I don't have keys to. And some of the
11 employees were really angry with me, and they thought that I
12 was really contributing to them not receiving raises. Like, I
13 had --

14 Q About how many -- do you -- do you ha -- do you remember
15 about how many coworkers you discussed this letter with?

16 JUDGE SANDRON: Okay, I assume you're going to tie this up
17 to something with management. Because if she was just talking
18 about it with other -- the employees, it -- it really
19 doesn't --

20 MS. PENDER: Right.

21 JUDGE SANDRON: -- add much to the --

22 MS. LANOUILLE: Your Honor, could I ask the last question
23 be repeated? We froze.

24 MS. PENDER: Oh.

25 JUDGE SANDRON: Oh. My question -- or her question -- my

1 question to her?

2 MS. LANOUEETTE: Yes.

3 JUDGE SANDRON: Oh. My -- my question to her was --
4 was -- was kind of a statement question, but was I assume that
5 this is going to be a predicate for --

6 MS. LANOUEETTE: Oh, I heard that. Okay.

7 JUDGE SANDRON: Oh, you heard that, okay.

8 MS. LANOUEETTE: Yes. Yes.

9 JUDGE SANDRON: So I assume that it is relevant to further
10 communications she had with management?

11 MS. PENDER: Well, that -- I mean, that was -- that's
12 pretty much it for her. It -- regarding this. It'll come up
13 with other witnesses.

14 Q BY MS. PENDER: Ms. Leonard, at -- at the time that you --
15 you left Northeast -- left working there --

16 MS. LANOUEETTE: Your Honor, you are all fro --

17 MS. PENDER: With -- oh, we're all frozen to Dawn?

18 MS. LANOUEETTE: Yes.

19 JUDGE SANDRON: Oh, no.

20 MS. LANOUEETTE: May I have just a minute to switch Wi-Fis
21 and see if that --

22 JUDGE SANDRON: Yes.

23 MS. LANOUEETTE: -- fixes it?

24 JUDGE SANDRON: All right.

25 MS. LANOUEETTE: Thank you.

1 JUDGE SANDRON: Okay. She -- if -- we -- everybody else
2 we can hear, right? And you can all hear me?

3 MS. PENDER: Yes.

4 JUDGE SANDRON: Okay. So it apparently -- let's see if we
5 can --

6 MS. HAMMONDS: Your Honor, if you can maybe move your
7 microphone a little bit closer to your mouth.

8 JUDGE SANDRON: And -- and Mr. Baker, you can still hear
9 everybody, right?

10 THE COURT REPORTER: Yes, Judge, I can.

11 JUDGE SANDRON: Oh, okay. Good. So I think the -- it's
12 just Ms. Lanouette's equipment.

13 THE COURT REPORTER: Yeah, nobody's frozen on my end.

14 JUDGE SANDRON: Okay, good. All right. I hope we can get
15 her. I think she's disconnected. She'll probably try to come
16 back.

17 MS. HAMMONDS: Yeah. I think if she switched Wi-Fi, it
18 would've disconnected her and she'll have to reconnect with the
19 other one to log in.

20 JUDGE SANDRON: Right. One of -- one of the pitfalls of
21 using Zoom. Hopefully we'll get her back shortly. I guess we
22 could all go on pause until she gets back. When we see her pop
23 up, we can rejoin. I don't know how long it will take her. So
24 okay. I think we'll go ahead and go on mute and then wait
25 until she shows up because there's no point in -- we can't do

1 anything until she gets back so.

2 (Off the record at 2:31 p.m.)

3 MS. LANOUEETTE: I am not able to get the other computer to
4 work at the moment. So to avoid delay, I will just sit here
5 and -- my client isn't still in the room with me.

6 JUDGE SANDRON: Oh, all right. If you can think of
7 another, you know, way around it, that's -- you know, we can
8 try to accommodate.

9 MS. LANOUEETTE: It's all right, Your Honor. I -- I --
10 I'll try again if we have a break, or I'll work on it tonight
11 if we don't.

12 JUDGE SANDRON: Okay. Yeah, we will take a short break,
13 you know, be -- this afternoon. And then if that's not enough
14 time, you know, maybe this afternoon, like you say, you can
15 figure out an alternative.

16 Okay. Ms. Pender, do you want to continue?

17 MS. PENDER: Yes. Thank you, Your Honor.

18 **RESUMED DIRECT EXAMINATION**

19 Q BY MS. PENDER: Ms. Leonard, when -- when you -- you
20 testified you left -- you stopped working at Northeast on
21 January 3rd, 2020. Was the letter still posted that day, to
22 your knowledge?

23 A Yes.

24 Q How do you know that?

25 A I saw it that day when I punched out. It was still on the

1 bulletin board.

2 MS. PENDER: I have no further questions for this witness
3 at this time, Your Honor.

4 JUDGE SANDRON: Okay. Do -- Ms. Tum -- Tuminaro, do you
5 have any other questions you'd like to ask?

6 MS. TUMINARO: I don't, Your Honor. Thank you.

7 JUDGE SANDRON: And Ms. Williamson or Ms. Joslin, do you
8 have any other questions you'd like to ask the witness?

9 MS. JOSLIN: No, thank you, Your Honor.

10 JUDGE SANDRON: Okay. Then I think we're ready for cross-
11 examination. Is there an affi -- I know technically -- I -- I
12 assume, since the Respondent's counsel asked for the Jencks
13 statement the first time, she wishes to have that as an ongoing
14 request; is that correct?

15 MS. LANOUEETTE: Yes, Your Honor.

16 JUDGE SANDRON: Do we have a statement from her?

17 MS. PENDER: Yes. And just -- I think, Dawn, I don't know
18 if you already have the one that was included in the district
19 court --

20 MS. LANOUEETTE: I do.

21 MS. PENDER: -- filings. Okay. Do you want me to resend
22 that to you as well or just the one you don't have?

23 MS. LANOUEETTE: Just what I don't have.

24 MS. PENDER: Okay.

25 JUDGE SANDRON: Okay. So there -- so there's -- there --

1 there were two statements?

2 MS. PENDER: There were two from this witness, Your Honor.
3 One was included in the -- in the 10(j) in the district court,
4 and one was after that.

5 JUDGE SANDRON: Okay. So -- so do you want to just
6 describe the one that -- oh, and for the record, did you get
7 the first Jencks statement back?

8 MS. PENDER: I didn't get it back --

9 JUDGE SANDRON: Yeah, I know there's --

10 MS. PENDER: Yeah. I think in past cases, the -- the
11 judge has just asked the Respondent's counsel to --

12 JUDGE SANDRON: To sort of --

13 MS. PENDER: -- state that it's been --

14 MS. LANOUEITE: It probably --

15 MS. PENDER: -- deleted or whatever.

16 JUDGE SANDRON: All right. Yeah. So -- yeah. And I
17 think -- right. I know we're dealing a little differently here
18 with Zoom. Yeah. So I think if counsel for the Employer can
19 just assure us that after each witness has concluded, she will
20 destroy the Jencks statement, that'd be fine.

21 MS. LANOUEITE: We will do that.

22 JUDGE SANDRON: Okay. We'll accept that representation.

23 So Ms. Pender, the -- the -- the statement that you --
24 you're going to provide, how long is that statement?

25 MS. PENDER: It is eight -- seven pages.

1 JUDGE SANDRON: And --

2 MS. PENDER: Including just the -- so really, six pages.
3 The last page is just a signature page.

4 JUDGE SANDRON: And -- and the date of --

5 MS. PENDER: Is January 7, 2020.

6 JUDGE SANDRON: All right. Then why don't you get it to
7 counsel, and we can take maybe 15 minutes --

8 MS. PENDER: Okay. I just sent it, Dawn.

9 JUDGE SANDRON: -- and come back. Okay. We'll -- we'll
10 come back in 15 minutes.

11 MS. PENDER: Okay.

12 JUDGE SANDRON: Off the record.

13 MS. PENDER: Thank you.

14 (Off the record at 2:36 p.m.)

15 JUDGE SANDRON: Cross-examination?

16 **CROSS-EXAMINATION**

17 Q BY MS. LANOUEETTE: Ms. Leonard, I want to ask you about
18 that first conversation you had where you said Julie Cole,
19 Keith, and -- and a few other people were there, okay. Were
20 you disciplined as a result of anything brought up in that
21 conversation?

22 A No.

23 Q During that conversation, did Keith raise with you patient
24 complaints; that you had been telling patients about a lack of
25 staffing in the facility?

1 A No. He asked if I had involved any patients or family
2 members, and I stated, no, are you accusing me of that? And he
3 said, no, I'm just asking.

4 Q Didn't he tell you that patients had made complaints that
5 you told them they wouldn't receive enough care because of
6 staffing?

7 A No.

8 Q Wasn't it the patient complaints that he raised with you
9 as something that could affect your license?

10 MS. PENDER: Objection.

11 JUDGE SANDRON: What's the objection?

12 MS. PENDER: She's already testified that he didn't raise
13 patient complaints with her.

14 JUDGE SANDRON: Well, this is cross-examination. I'll
15 allow it.

16 THE COURT REPORTER: Judge? You're -- you're awfully --

17 JUDGE SANDRON: Yes.

18 THE COURT REPORTER: -- quiet compared to everybody else.

19 JUDGE SANDRON: I don't know why. Let's see.

20 THE COURT REPORTER: There, that sounds better.

21 JUDGE SANDRON: I had --

22 THE COURT REPORTER: That -- that sounds better.

23 JUDGE SANDRON: Oh, okay. I'll put it on maximum here.

24 There.

25 THE COURT REPORTER: Thank you, Judge.

1 JUDGE SANDRON: Okay. Sure.

2 Q BY MS. LANOUEETTE: Ms. -- Ms. Leonard, department heads
3 are responsible for their departments 24/7; aren't they?

4 A I'm sorry, can you repeat that?

5 Q Department heads at Northeast Center, are they responsible
6 for their departments 24/7?

7 A Yes.

8 Q Okay. So if they came to the facility to check on their
9 evening staff's -- evening shift staff, that would be part of
10 their responsibility, wouldn't it?

11 A Yes.

12 Q And I think you said it was -- these people couldn't help
13 in any way; is that your testimony?

14 A Yes.

15 Q Okay. Unit managers are nurses, are they not?

16 A They are. But the people that were coming on the units at
17 10:00 at night were people that were the department -- of
18 housekeeping or dietary. I mean, what is a dietary person
19 going to do at 10:00 at night to help me?

20 Q Okay. I thought you had said some of them were unit
21 managers.

22 A Some were unit managers.

23 Q Okay. So a unit manager could have helped you if -- if
24 they had -- if -- because they're a nurse; is that accurate?

25 A Yes.

1 Q Okay. Could the administrator or these department heads
2 get supplies for you?

3 A They could.

4 Q Could they get linens for you?

5 A Yes.

6 Q Could they get towels for you?

7 A Yes.

8 Q Did you ask any of them to do something that they refused
9 to do?

10 A No.

11 Q Okay. And at the time, the facility was short-staffed on
12 your shift; wasn't it?

13 A Correct.

14 MS. LANOUE: Those are all the questions I have.

15 JUDGE SANDRON: Ms. Pender, redirect?

16 MS. PENDER: Just very briefly, Your Honor.

17 **REDIRECT EXAMINATION**

18 Q BY MS. PENDER: Ms. Leonard, to your knowledge, is the
19 department -- is the -- the director of housekeeping
20 responsible for what RNs do on NRP4?

21 A No.

22 Q Is the depart -- is the director of maintenance
23 responsible for how CNAs do their job duties?

24 A No.

25 Q Prior to the start of the Union organizing campaign in

1 June of 2019, in your years working at Northeast Center, about
2 how often would unit managers, administration, or other
3 department heads come to your unit to offer to help you?

4 A Not likely, unless it was my personal unit manager.

5 Q Do you recall in your entire time working at Northeast
6 prior to June 2019, anyone other than your unit manager, any
7 other unit head or department head, coming to your unit and
8 offering you help with your work?

9 A No.

10 MS. PENDER: Nothing further, Your Honor.

11 JUDGE SANDRON: Okay. Ms. Tuminaro, any other questions?

12 MS. TUMINARO: No questions, Your Honor.

13 JUDGE SANDRON: And Ms. Joslin or Ms. --

14 MS. JOSLIN: No, thank you, Your Honor.

15 JUDGE SANDRON: And Ms. Lanouette, any further -- any
16 recross?

17 MS. LANOUEETTE: No, Your Honor.

18 JUDGE SANDRON: Okay. Thank you, Ms. Leonard. You're
19 done with your testimony. Thank you.

20 THE WITNESS: Thank you.

21 JUDGE SANDRON: Okay. So Ms. Pender --

22 MS. PENDER: Your Honor, we've got our -- we've got our
23 next witness. We were having her come at 3. We can see if she
24 can hop on a few minutes earlier, or we could take five
25 minutes, whatever you prefer.

1 JUDGE SANDRON: All right. Well, do you want to see if --
2 if you can get her, you know, right at this moment? If not, we
3 can just go off for a few minutes.

4 MS. PENDER: Yeah.

5 MS. TUMINARO: I can call her, Your Honor, and see if
6 she's --

7 JUDGE SANDRON: Oh, she's not in the waiting room, right?

8 MS. PENDER: No, she's not. We were telling her to be
9 there at 3.

10 JUDGE SANDRON: Oh. All right. We -- we can go off the
11 record for just a few minutes.

12 (Off the record at 2:57 p.m.)

13 JUDGE SANDRON: You're on -- I'll go -- hi, this is Judge
14 Sandron. I'm -- I'm the judge in this trial. So I'm going to
15 go ahead and swear you in so you can testify. So if you'll
16 raise your right hand.

17 Whereupon,

18 **CATHY TODD**

19 having been duly sworn, was called as a witness herein and was
20 examined and testified as follows:

21 JUDGE SANDRON: Okay. If you'll please state and spell
22 your full and correct legal name and provide us with an
23 address.

24 THE WITNESS: My name is Cathy Todd. It is spelled
25 C-A-T-H-Y T-O-D-D. My address is 444 Glenerie Boulevard,

1 Saugerties, New York.

2 JUDGE SANDRON: And -- and the zip code, if you know -- if
3 you have it.

4 THE WITNESS: 12477.

5 JUDGE SANDRON: Okay. Thank you.

6 **DIRECT EXAMINATION**

7 Q BY MS. PENDER: Good afternoon, Ms. Todd. I have some
8 questions for you. If at any time you don't understand my
9 question or you can't hear me, please let me know. I'll be
10 happy to ask it again. The court reporter is recording a
11 transcript, so you need to give verbal answers to questions.
12 You can't just nod; you have to say yes or no. And also,
13 because we're doing this by Zoom, there might be a bit of a lag
14 between speakers. So I would ask that you just let me get my
15 full question out before you answer. I'll do you the same.
16 I'll let you get your full answer out before I ask my next
17 question. Okay?

18 A Okay.

19 Q All right. Ms. Todd, are you familiar with Northeast
20 Center for Rehabilitation and Brain Injury?

21 A Yes, I am.

22 Q If I refer to it as Northeast, will you know what I'm
23 talking about?

24 A Yes.

25 Q And how are you familiar with Northeast?

1 A I worked there for 12 years.

2 Q And when did you work there?

3 A From 2007 until 2019.

4 Q And in 2019, did there come a time when you stopped
5 working at Northeast?

6 A Yes.

7 Q Do you remember when that was?

8 A November 19th, 2019.

9 Q And why did you stop working there on that date?

10 A I was fired.

11 Q When you worked at Northeast, what was your job title?

12 A I'm an LPN, and I was in charge of a 40-bed unit.

13 Q Were you an LPN the entire time you worked at Northeast?

14 A Yes, I was.

15 Q What was your hourly rate of pay?

16 A \$25 an hour.

17 Q And what was your normal schedule?

18 A 3 to --

19 JUDGE SANDRON: This is -- oh, excuse me. This is when
20 she left? Because she was there for 12 years.

21 MS. PENDER: Right. At the -- at the time that -- right.

22 Q BY MS. PENDER: At the time that you left Northeast, what
23 was your typical schedule?

24 A 3 -- 3 p.m. to 11 p.m.

25 Q About how many hours a week was that total?

1 A 40.

2 Q Did you work any overtime?

3 A Yes.

4 Q About how much?

5 A I would do two doubles a week. So I would work 3 to 11
6 and then 11 p. to 7 a. twice a week.

7 Q And as an LPN -- at the time you left Northeast, you were
8 an LPN. What were your job duties as an LPN?

9 A To give out medication, to do any treatments that were
10 ordered, and to deal with behaviors. It's a brain injury
11 facility.

12 Q What unit did you work on?

13 A NRP4.

14 Q Do you know what NRP stands for? If you don't --

15 JUDGE SANDRON: Right. Don't guess.

16 THE WITNESS: I'm sorry, I -- I used to, but I -- I don't
17 recall. I'm sorry.

18 JUDGE SANDRON: That's all right. Yeah, whatever you
19 remember, that's fine.

20 THE WITNESS: Okay.

21 Q BY MS. PENDER: How were -- how -- how was medication
22 given on NRP4, on your unit?

23 A The neighbors would come to the nursing station. It was
24 an independent unit. It was more for people who were ready to
25 go back to the community, and it was for more independent

1 people.

2 Q And how did that affect medication distribution?

3 A Well, we were trying to get them to come to the nurses
4 station to get medication so that they would get -- you know,
5 learn the time to take the medication and get into the habit of
6 doing that.

7 Q Ms. Todd, are you familiar with 1199 SEIU?

8 A Yes.

9 Q And if I refer to that as the Union, will you know what
10 I'm referring to?

11 A Yes.

12 Q How -- are you familiar with the Union?

13 A I was very much involved in the organizing campaign.

14 Q What organizing campaign were you involved in?

15 A For the Union.

16 Q Where? Where were you trying to organize the Union?

17 A At the Northeast Center.

18 Q And when were you involved in that campaign; when did you
19 get involved?

20 A June of 2019.

21 Q And how long were you involved in the campaign?

22 A Up until I was fired.

23 Q And what, if anything, did you do as a part of the Union
24 campaign?

25 A We would meet at different places to discuss the campaign.

1 I talked to a lot of my coworkers about what the Union could do
2 for us and help us to do. I handed out flyers, cards. I was
3 on the road at shift change.

4 Q What is a shift change?

5 A You would stand outside -- so a shift change would be in
6 between 7 to 3 and 3 to 11, and -- and hand out cards and
7 answer any questions that anybody had about the Union.

8 Q And about how many times do -- do you estimate you
9 participated in -- in that shift change activity?

10 A Every single time.

11 Q Between -- can you give me a ballpark, like a dozen or
12 ten?

13 A Yeah. Ten to -- ten to a dozen, yes.

14 Q And that's between June 2019 and November 2019?

15 A Yes.

16 Q Did you ever recruit any coworkers into also passing out
17 cards?

18 A No.

19 Q What -- where were the Union meetings that you attended?
20 Where did those take place?

21 A Diners, parking lots, Angela's Pizza Restaurant.

22 Q And about how many of those meetings do you recall
23 attending?

24 A Every single one that they had, I was there.

25 JUDGE SANDRON: So why don't --

1 Q BY MS. PENDER: Do you know how many there were?

2 JUDGE SANDRON: Why -- why don't we --

3 A I -- I can't --

4 JUDGE SANDRON: Why don't we distinguish the -- the, you
5 know, the places away from the facility and at the, you know --
6 or near the facility.

7 So you -- you mentioned restaurants. Do you recall about
8 how many meetings you attended at the restaurants?

9 THE WITNESS: At least three or four at the pizza
10 restaurant.

11 JUDGE SANDRON: Okay. And then -- and a -- and you
12 said -- did you ever -- participated in one in -- in the
13 parking lot itself? If you recall?

14 THE WITNESS: Which parking lot?

15 MS. PENDER: At Northeast Center.

16 JUDGE SANDRON: Right.

17 THE WITNESS: I -- I was there, but I had to be at work.

18 JUDGE SANDRON: And the -- then -- and then -- and there
19 was another location you mentioned where you were there
20 frequently. And -- and where was -- where was that in relation
21 to the company?

22 THE WITNESS: Let's see. The ice cream parlor, which is
23 right across from the company parking lot. Angela's Pizza,
24 which is right around the corner from the facility.

25 JUDGE SANDRON: And -- and when -- when you were involved

1 in -- in a shift change activities, where did those take place?

2 THE WITNESS: Right -- right next to the road that leads
3 into the facility.

4 JUDGE SANDRON: Okay.

5 Q BY MS. PENDER: And was -- were -- were the shift changes
6 attended by employees or anyone else?

7 A Yes. Employees and a representative from the Union.

8 Q Did you talk to anyone at -- at Northeast about the Union,
9 asi -- like other than other employees?

10 A Yes. Unit managers, supervisor, director of nursing --

11 Q Okay. Do you -- can you tell me the first time you talked
12 to a unit manager about the Union?

13 JUDGE SANDRON: Well, okay. It might be -- it may be a
14 minor point, but maybe we should ask her "with", you know,
15 rather than "to", because "to" suggests she initiated --

16 MS. PENDER: Of course. Yeah.

17 JUDGE SANDRON: -- a conversation.

18 MS. PENDER: Yeah.

19 JUDGE SANDRON: So did she?

20 MS. PENDER: Okay.

21 JUDGE SANDRON: You might better say "with", and then she
22 can give the details.

23 MS. PENDER: Okay.

24 Q BY MS. PENDER: Well, tell me about the first conversation
25 you recall having with the unit -- a unit manager about the

1 Union?

2 A About a week after we had our first meeting, I was in the
3 dining room during dinner, and a unit manager from another
4 unit, Katrina Collenton, came up to me in the dining room, and
5 she said, I heard there was a meeting about the Union and I
6 heard you were there. And I said, yes, I was, and it shouldn't
7 surprise anybody that I would be there. And she said, you
8 know, why were you there? And I said, because I want to know
9 if they can help. And she said, well, can they? And I said,
10 yes, they can. And she was gone.

11 MS. PENDER: I'm going to give you the spelling of that
12 name, Your Honor. It -- it's K-A-T-R-I-N-A, Katrina, last name
13 C-O-L-L-E-N-T-O-N.

14 JUDGE SANDRON: Thank you.

15 Was anybody else there but the two of you in the immediate
16 area?

17 THE WITNESS: Well, we were in the dining room, so you
18 know, all the residents were there eating dinner. There was
19 another CNA that was working with me but I don't recall which
20 one. I'm sorry.

21 Q BY MS. PENDER: How long did your conversation with
22 Katrina Collenton last?

23 A It was pretty short after I admitted that I was there.
24 She left the dining room.

25 Q Do you recall any other unit managers you spoke to

1 regarding the Union -- you spoke with regarding the Union?

2 A I spoke with my own unit manager. That was Cindy Pope.

3 Q And do you remember when -- when you spoke to Cindy Pope?

4 A I don't remember the exact date, but we had quite a few
5 conversations about it. I mean, it was never a secret;
6 everybody knew.

7 MS. PENDER: Cindy Pope, Your Honor, is C-I-N-D-Y P-O-P-E.

8 JUDGE SANDRON: Thank you. Go ahead. You can -- she had
9 a lot of conversations -- I don't know if you want to cover
10 them generally and then see if any stand out.

11 MS. PENDER: Right. I mean --

12 Q BY MS. PENDER: Ms. Todd, what -- what, generally, do you
13 recall from your conversations with -- with Cindy Pope about
14 the Union?

15 A Again, she just wanted to know why I would do that, and I
16 said, you know, you know what we've been going through. You
17 know. And it's hard and we need help. And she did not
18 understand that at all.

19 JUDGE SANDRON: But what did she --

20 Q BY MS. PENDER: Are there any par --

21 MS. PENDER: Go ahead.

22 JUDGE SANDRON: Oh, excuse me.

23 But what did she say? You know, you say she didn't
24 understand. Can you tell us what she actually said?

25 THE WITNESS: She told me that our health insurance that

1 we had at the time was never going to change; it was never
2 going to get better. We weren't going to get a raise. All of
3 those things. And so I said, well, that's what we need the
4 Union for.

5 Q BY MS. PENDER: Do you recall any specific conversations
6 that you had with her, aside from the general?

7 A That was the only specific one. I mean, other than that I
8 knew she didn't --

9 Q Do you remem --

10 A -- she disagreed with me.

11 Q Do you remember about when you talked to her in that one
12 that you recall?

13 JUDGE SANDRON: Okay. Well, wait one second. I think --
14 so we don't get confused.

15 You said you had a lot of conversations with her. So the
16 one you're jus -- you know, the details of the one you -- you
17 just provided, wer -- where those in the general conversations
18 or was that in -- in one specific conversation that you
19 remember?

20 THE WITNESS: That was the one specific conversation that
21 I remember.

22 Q BY MS. PENDER: And approximately when was that?

23 A It wasn't long after the one with Katrina. So maybe
24 July -- maybe around July. I -- I -- I can't be specific. I'm
25 sorry.

1 Q And do you remember where you were when -- when that
2 conversation occurred?

3 A On the unit.

4 Q On what unit?

5 A NRP4.

6 Q And do you remember about what time of day that -- that
7 would have been?

8 A It would have to be in the afternoon because I work 3 p.m.
9 to 11 p.m.

10 Q And what hours --

11 JUDGE SANDRON: (Indiscernible, simultaneous speech) --
12 Go ahead.

13 MS. PENDER: All right.

14 Q BY MS. PENDER: What hours does -- did Cindy Pope work?

15 A I think it was, like, 8 to 4.

16 Q Okay. 8 a.m. to 4 p.m.?

17 A Yes.

18 JUDGE SANDRON: Were -- were any other employees around,
19 if -- if you remember?

20 THE WITNESS: I -- I don't recall.

21 JUDGE SANDRON: That's all right, whatever you remember.

22 And what -- what -- just one last follow-up question. You said
23 you had a lot of conversations with her. Was -- what -- but
24 was that -- was that where the Union was brought up or -- or
25 you just had the one with her where the Union, specifically,

1 was mentioned?

2 THE WITNESS: I mean, I had a lot of conversations about
3 it with a lot of people. I had a few with her, but she was
4 very clear that she did not want to discuss it and was not
5 interested.

6 JUDGE SANDRON: So you don't -- you really recall only the
7 specifics of that one that you've related?

8 THE WITNESS: Yes. Yes. That she wanted to know exactly
9 why I would do that.

10 Q BY MS. PENDER: Ms. Todd, do you recall conversations with
11 any other managers or administrator -- administrative personnel
12 regarding the Union?

13 A Yes. I had a -- a few conversations with the director of
14 nursing, Carolyn Carchidi.

15 Q Do you recall any specific dates of any of those
16 conversations?

17 A We had quite a lengthy one about it after the director of
18 nursing was fired, which was -- that was on Halloween of 2019,
19 and Carolyn was acting director of nursing at the time. She
20 had stopped by the unit, and we discussed it. We had discussed
21 it prior to that. She knew why I was interested in being part
22 of the Union. She knew all of that. But we discussed it a few
23 times.

24 Q And so you -- you talked about Halloween of 2019. How --
25 how much time between Halloween and that conversation do you

1 think there was?

2 A It was only a couple of days after, because she had come
3 down to the unit, and I said to her, are you going to be the
4 director of nursing now? And I hope so and congratulations,
5 you know.

6 Q Okay.

7 A So it was only a few days after.

8 Q Do you recall when -- where that conversation you had with
9 her took place?

10 A It took place on NRP4. I was in the medication room and
11 she was standing in the doorway.

12 Q And was anyone else present during that conversation?

13 A I don't recall.

14 Q And tell me, to the best of your recollection, what she
15 said during that conversation?

16 A Again, we were just talking about the Union, and they were
17 being -- they were being blamed for a lot of things at the
18 time, but it wasn't them. They weren't doing --

19 Q Do you --

20 A -- (Indiscernible, simultaneous speech) --

21 Q Do you remember what --

22 JUDGE SANDRON: Okay. All right. Yeah. I think may --
23 maybe it's better if you start from the beginning and then just
24 tell us who said what, you know. And -- and that will tell us
25 how the subject came up. So you congratulated her first, was

1 that what you --

2 THE WITNESS: Yes.

3 JUDGE SANDRON: -- said? And then -- well, how did the
4 subject of the Union come up?

5 THE WITNESS: Because the director of nursing at the time
6 was fired a few days prior to that, and people were blaming the
7 Union for it. And it -- it -- what -- it didn't have anything
8 to do with that. And that's what started the discussion.
9 And --

10 JUDGE SANDRON: All right. All right. But wait. Who --
11 who's -- who brought up the fired director, you or she, in this
12 conversation? If you remember?

13 THE WITNESS: I -- I don't recall. I recall talking about
14 it all, but I don't remember who brought it up.

15 JUDGE SANDRON: And what -- and what did she say about
16 that?

17 THE WITNESS: Just that this whole Union thing was to be
18 blamed for it. And I disagreed.

19 Q BY MS. PENDER: Do you recall any other specifics that
20 were said during that -- that conversation?

21 A We talked about what happened with my health insurance and
22 why I was ever involved in it in the first place. And again,
23 it was no secret. It wa --

24 Q When --

25 A -- everybody in that facility knew what I had gone through

1 and -- all the way up to administration, everybody knew.

2 JUDGE SANDRON: All right.

3 A It was never a secret.

4 Q BY MS. PENDER: When you say "involved in it", what is
5 "it"?

6 MS. LANOUEETTE: Objection, Your Honor. I object to the
7 testimony that everyone knew.

8 JUDGE SANDRON: Yeah. That's not --

9 MS. LANOUEETTE: If they --

10 JUDGE SANDRON: I don't think we --

11 MS. LANOUEETTE: -- characterize -- I -- may --

12 JUDGE SANDRON: Right. I mean, we -- we can't consider
13 that to be specific enough. She can go on with other
14 conversations she had, that'd be fine.

15 MS. PENDER: Okay. I'll move on.

16 Q BY MS. PENDER: Ms. Todd, I'm going to che -- turn your
17 attention to November 13th of 2019.

18 JUDGE SANDRON: Did you have further conversations,
19 specific conversations, you can remember with her about the
20 Union? This is the director, the new director. You --

21 THE WITNESS: That was the -- that was the last
22 conversation that I had with her --

23 JUDGE SANDRON: Okay.

24 THE WITNESS: -- about the Union.

25 JUDGE SANDRON: All right.

1 Q BY MS. PENDER: Directing your attention to November 13th
2 of 2019, Ms. Todd. Tell me what, if anything, happened that
3 day?

4 A I was home, and my phone was buzzing because there was a
5 message left on there. And when I listened to the message, it
6 was from Carolyn Carchidi. And she asked that I return her
7 call; and so I did. And she stated that she was with Patrick
8 Weir, who was the administrator, and that I would be suspended
9 for removing food from someone's tray and talking on my cell
10 phone during medication pass. And although --

11 Q I'm going to ask you -- I'm going to ask you a couple of
12 specifics about that phone call. About what time do you return
13 that call?

14 A It was in the afternoon.

15 Q Were you scheduled to work that day?

16 A Yes.

17 Q What time were you scheduled to work?

18 A 3 p.m.

19 Q And did you return the call before or after going to work?

20 A Before.

21 Q And you said who was on the call. Was anyone present with
22 you at the time?

23 A No.

24 Q Okay. So can you tell me, to the best of your
25 recollection, who said what during that conversation?

1 A Carolyn did the talking. She just said that I was
2 suspended until further investigation.

3 Q Did you respond to that?

4 A Yes. I said, that's not true. I didn't do that.

5 Q Did -- did she say anything else, or did --

6 A She said that they were going to investigate and would get
7 back to me.

8 Q Did Patrick Weir say anything during that call, that you
9 recall?

10 A No. He just said he was there. I was on speaker.

11 Q And do you say anything else that you recall?

12 A Just that it wasn't true.

13 Q What wasn't true?

14 A That I didn't do what they were accusing me of.

15 Q Was there any mention of patients during that call?

16 A They just said that I had removed food from someone's
17 tray, and that I was talking on my cell phone during a med
18 pass, which is absolutely impossible to do.

19 Q Did anyone mention any patient medical issues?

20 A They said that I also was -- I had said someone's blood
21 sugar out loud in front of others.

22 Q And did you respond to that?

23 A I said I didn't do it.

24 Q Was there any other reference to the telephone?

25 A That I wouldn't let someone use the telephone.

1 Q And did you respond to that?

2 A Yes. I mean, it's the unit manager's rule --

3 Q Well, what did -- what did -- what did you say when you
4 responded?

5 A I said it is the unit manager's rule that no one may be on
6 the telephone during med pass, because it is a distraction.
7 And that's her rule. And so they could use the phone before or
8 after but not during.

9 Q And who did this rule apply to?

10 A The neighbors.

11 Q And about how long was that phone call?

12 A It wasn't long.

13 Q And what, if anything, did you do after that call?

14 A Nothing. I -- I was home until they called me back.

15 Q Do you remember when they -- when -- when you re --
16 received another call from Northeast?

17 A November 19th.

18 Q And what happened on that call? Who called you?

19 A Carolyn called me. She said I was on speakerphone, that
20 Patrick was there, and would I come in to the facility to meet
21 with them.

22 Q When were you supposed to go in?

23 A That afternoon.

24 Q And did you do that?

25 A Yes.

1 Q About what time did you go to the facility that afternoon?

2 Take your time. If you need a moment, you can take a moment.

3 A Sorry.

4 Q That's okay. Take your time.

5 JUDGE SANDRON: Yeah.

6 A It was early afternoon.

7 Q BY MS. PENDER: And when you went there -- walk me through
8 what happened. And if you need to take a break, we -- you
9 know, we can do that for a moment. We -- do you want to take a
10 minute?

11 A No. I'm okay. Sorry.

12 JUDGE SANDRON: Tha -- that's all right.

13 MS. PENDER: It's all right.

14 JUDGE SANDRON: The witness is getting emotional. But --
15 and that's fine.

16 THE WITNESS: I apologize.

17 JUDGE SANDRON: No, you don't have to. It's how you feel.

18 While the -- while the witness is regaining her composure,
19 I -- I -- this is to counsels. Is there a written, aggressive
20 discipline policy in effect? If -- is there one in writing,
21 if -- of which the parties are aware?

22 MS. PENDER: I -- I believe there is. Dawn would have the
23 final authority, but I -- I believe there is. Although I
24 believe it says there are certain things that -- where it
25 wouldn't apply. But I think there is one.

1 JUDGE SANDRON: All right. Well, we can get it in the
2 record at some point.

3 So Ms. Todd, do you feel like you're ready to continue?

4 THE WITNESS: I'm sorry. I'm sorry. I'm okay.

5 JUDGE SANDRON: That's all right.

6 THE WITNESS: I'm okay. It's emotional. Okay. I'm okay.
7 Thank you.

8 Q BY MS. PENDER: Okay. So whe -- when you went to the
9 facility on -- on the 19th, in the afternoon, what happened
10 when you arrived?

11 A I waited in the waiting room, and Carolyn Carchidi came
12 out and got me and took me into Patrick Weir's office.

13 Q And was it just the three of you or was anyone else there?

14 A Just the three of us.

15 Q And what happened during that meeting? Who said what?

16 A Carolyn just sat there. Patrick said -- he said that I
17 couldn't work there anymore because they had done the
18 investigation and that he was shocked at what he had learned.
19 And that there were multiple complaints from my coworkers, and
20 that he just couldn't have me there. And that he would be
21 reporting me to the nursing board.

22 Q And did he say anything specific that you had done wrong?

23 A No. He never -- that's all he said. He -- he just -- I
24 just kept saying, it's not true. I didn't do that. You know I
25 didn't do that. And he said, I personally have never had any

1 problems with you, but because of the investigation, I can't
2 have you working here anymore.

3 Q Did -- did --

4 JUDGE SANDRON: Do you remember anything else that either
5 you said or he said in -- while you were there?

6 THE WITNESS: I just kept saying, you know that's not
7 true; you know that's not true.

8 Q BY MS. PENDER: Did he tell you any specifics of the
9 apparent complaints from coworkers?

10 A No.

11 Q Have you --

12 A That's all he said.

13 Q Did he mention any complaints from patients?

14 A No. No.

15 Q Do you recall anything else from that meeting?

16 A Carolyn said, I'll walk you out. And they walked me out
17 of the -- she walked me out of the building.

18 Q Prior to -- prior to the November 13th, 2019 phone call
19 when you were suspended, had you ever been suspended from
20 Northeast before?

21 A Never. Never been.

22 Q Do you recall receiving any disciplines prior to that
23 date?

24 A I don't recall ever.

25 Q Okay.

1 MS. PENDER: I don't have anything further for this
2 witness right now, Your Honor.

3 JUDGE SANDRON: All right. Okay.

4 Do counsels for either Charging Party have any follow-up
5 questions they'd like to ask the witness?

6 MS. TUMINARO: I'd just like to ask a few, Your Honor.

7 JUDGE SANDRON: Go ahead.

8 **CROSS-EXAMINATION**

9 Q BY MS. TUMINARO: Ms. Todd, why did you want a union at
10 Northeast?

11 A I had had a -- I had been hospitalized, long story short,
12 and the health insurance refused to pay the bill. I had to
13 hire an attorney and -- and I just wanted better health
14 insurance. And we hadn't had a raise in years. You know, we
15 just wanted something better.

16 MS. TUMINARO: I have nothing further, Your Honor.

17 JUDGE SANDRON: All right. And Ms. Ja -- Joslin, any
18 questions?

19 MS. JOSLIN: Nothing, Your Honor. Thank you.

20 JUDGE SANDRON: Okay. Ms. Todd, did -- did the company
21 ever file any charges against you with the nursing board? Did
22 they ever do that? If you don't --

23 THE WITNESS: I don't know. I don't know.

24 JUDGE SANDRON: But -- but you were never notified of any
25 action they took?

1 THE WITNESS: No, sir.

2 JUDGE SANDRON: Ms. Lanouette? Is the cross-examination,
3 do you -- well, I know you were requesting affidavits.

4 Do you have one to present to her?

5 MS. PENDER: I do.

6 JUDGE SANDRON: Okay. And how long is that affidavit?

7 MS. PENDER: I -- Dawn, I don't know -- do you have both
8 of -- of hers? There's one that's six pages and there's one
9 that's four, and they're dated December 6, 2019 and February 3,
10 2020.

11 MS. LANOUEETTE: I have a February 5th, 2020.

12 MS. PENDER: There's signed -- one's signed on February
13 5th. Yeah.

14 MS. LANOUEETTE: Okay. I have that up.

15 MS. PENDER: And the other one is signed on December 16th
16 of '19.

17 MS. LANOUEETTE: Yes. I have that one as well.

18 MS. PENDER: Okay. That's all I have for her.

19 MS. LANOUEETTE: And I would just request a moment, Your
20 Honor, to (audio interference) --

21 JUDGE SANDRON: Yeah.

22 MS. LANOUEETTE: -- client.

23 JUDGE SANDRON: Do you think ten minutes will be enough or
24 do you want --

25 MS. LANOUEETTE: I actually think five minutes will be

1 enough.

2 JUDGE SANDRON: All right. Fine. Then we'll go off the
3 record for five minutes.

4 MS. PENDER: Thank you.

5 (Off the record at 3:37 p.m.)

6 JUDGE SANDRON: Okay. I think we're all ready then to go
7 on to cross. I think everybody here get on --

8 **CROSS-EXAMINATION**

9 Q BY MS. LANOUEETTE: Ms. Todd, where are you currently
10 employed?

11 MS. PENDER: You're on mute, Ms. Todd.

12 UNIDENTIFIED SPEAKER: Ms. Todd.

13 MS. LANOUEETTE: You're -- yeah, you have to unmute
14 yourself. No. It's not that camera. There's a little button
15 out -- or a microphone-looking thing. If you click on that.
16 There you go.

17 Q BY MS. LANOUEETTE: Ms. Todd, where are you employed?

18 A Willcare.

19 Q And what is your position at Willcare?

20 A LPN.

21 Q What is your rate of pay?

22 A 27.

23 Q And how many hours a week do you work?

24 A 40.

25 Q How long have you been at Willcare?

1 A Since November 23rd.

2 Q November 23rd of what year?

3 A 2020.

4 JUDGE SANDRON: Is Willcare one word or is it together?

5 THE WITNESS: It -- yeah, one word -- Willcare.

6 Q BY Ms. LANOUEETTE: Okay. And where were you employed
7 before that?

8 A I do -- I also do -- I work for Norman's -- it's an
9 agency. So I do agency work. It's kind of like a per diem.

10 Q And how long have you worked at Norman's?

11 A Since September. And I still work for them. I can fill
12 in and stuff.

13 Q What is our rate of pay for them?

14 A 27.50.

15 Q And you said that's per diem, do you have any --

16 A Yes.

17 Q Could you give us your best estimate of the number of
18 hours that you typically work in a week?

19 A For Norman's --

20 MS. TUMINARO: What's the time frame -- the time frame
21 that you're talking about?

22 MS. LANOUEETTE: She -- she said she started there in
23 September 2020.

24 Q BY MS. LANOUEETTE: Has it varied over time?

25 A Working for Norman, you mean?

1 Q Yes.

2 A I'm sorry. You guys were going in and out. I wasn't
3 sure. I -- I did steady for them, 40 hours a week.

4 Q And now is that different? What do you -- are -- are you
5 still working 40 hours a week for Norman?

6 A No, no. I can't -- I can't do both. But I can fill in
7 for them if I have a day off or something.

8 Q When did you stop working 40 hours a week for Norman?

9 A When I took the top at Willcare.

10 Q Now that you are per diem, approximately how many hours a
11 week do you work for Norman's?

12 A I haven't because I'm still in orientation with Willcare.
13 So I haven't picked up any time with them, but I can, you know.

14 Q Okay. Before Norman's, where did you work?

15 A Ferncliffe.

16 JUDGE SANDRON: Listen, can you spell that?

17 THE WITNESS: Ferncliffe?

18 JUDGE SANDRON: Yes.

19 THE WITNESS: F-E-R-N-C-L-I-F-F-E.

20 Q BY MS. LANOUE: And how many hours a week do you
21 work -- did you work -- well, sorry. Let me start with, what
22 were the days of your employment with Ferncliffe?

23 JUDGE SANDRON: All right. Are we going more to issues of
24 potential back pay and litigation, because it doesn't seem like
25 this will really having a bearing on discharge? You know,

1 these -- these questions may be, you know, of importance if
2 there's a question of how much back pay is litigated if she is
3 successful, but it really doesn't err on the legality of the
4 determination.

5 MS. LANOUE: And if we are willing to have the
6 mitigation information provided to me in the event there's a
7 back pay award, I can avoid these questions.

8 JUDGE SANDRON: Well, yes, certainly, if, you know, I find
9 merit to her being discharged unlawfully, and assuming it's a
10 palaver that goes higher up, like to the Board. Then if
11 there's, you know, into the compliance stage, you'll have an
12 opportunity to explore, you know, any effort -- any interim
13 employment she had. And if there are questions about that, you
14 can request -- you know, you can end up going to a compliance
15 back hearing -- a back pay hearing. And you can argue if you
16 don't think she's accurately reported her wages or has other
17 earnings that she hasn't disclosed and those kind of matters.

18 MS. LANOUE: I will move on, Your Honor.

19 Q BY MS. LANOUE: Ms. Todd, Northeast Center on NPR4,
20 those inpatients have short-term memory loss; is that right?

21 A Some have short term, some have long term. It depended on
22 the injury.

23 Q They all have some form of brain injury?

24 A Yeah.

25 Q And the LPN has a lot of control over the units; is that

1 right?

2 A Not sure what you mean.

3 Q Well, does the LPN control when patients get their
4 medication?

5 A Yes. I mean there's a medication time.

6 Q Does the LPN control when the patients get phone calls?

7 A Well, the unit managers usually set up the rules and you
8 just -- you follow along.

9 Q But it's the LPNs the patients have to ask for a phone
10 call, right?

11 A Or the CNA. They can ask.

12 Q And overrule the CNA?

13 A What's that?

14 Q Can the LPN overrule the CNA?

15 A I -- I guess. I don't know that they do.

16 JUDGE SANDRON: Are you aware if it's ever happened?

17 THE WITNESS: No.

18 Q BY MS. LANOUILLE: Now you worked the 7 p.m. to 11 -- or,
19 no, sorry. You worked what hours?

20 A 3 p.m. to 11 p.m.

21 Q And was your unit manager typically there your entire
22 shift?

23 A No.

24 Q What time does the -- did your unit manager typically
25 leave?

1 A It's not always the same time, but usually before dinner
2 time. Sometimes earlier; sometimes later.

3 Q As an LPN at Northeast Center, did you receive training in
4 abuse prevention?

5 A Yes.

6 Q How often?

7 A I don't recall.

8 Q Is it required annually for employees of long-term care
9 facilities?

10 A I don't -- I can't say for sure. I don't know how often
11 we did it.

12 Q At Northeast, was it acceptable for an LPN to yell at a
13 neighbor?

14 A No.

15 Q Would it be acceptable to tell them, "I don't have fucking
16 time for this"?

17 A No.

18 Q Was it acceptable to take their food away because they
19 were messy eaters?

20 A No.

21 Q Do some of the -- the patients have issues with eating
22 because of their brain injury?

23 A Yeah.

24 Q And do some of them have anxiety around food because of
25 their brain injury?

1 A Some do, yes.

2 Q Were their patients on NPR4 who had issues with messy
3 eating because of their brain injury?

4 A Yes.

5 Q And -- and I will clarify when you worked there?

6 A Yes.

7 Q Were there patients on NPR4 who had anxiety around food
8 when you worked there?

9 A Yes.

10 Q Would it be acceptable for an LPN to make fun of the way
11 a -- a patient ate?

12 A No.

13 Q You referenced a medication policy at the facility. When
14 are medications supposed to be given to patients?

15 A 5 p.m. and 9 p.m. And you have an hour leeway. So you
16 can do an hour before or an hour after.

17 Q So it would not be acceptable for a patient to be given
18 their 9 p.m. medication at 7 p.m.?

19 A No.

20 Q If a patient doesn't come out to the desk to get their
21 medication, the LPN is still responsible for that medication
22 administration, aren't they?

23 A Yes.

24 Q And if for some reason an LP -- a patient refused
25 medication, the LPN would need to document that?

1 A Right.

2 Q And just so the record is clear, CNAs cannot do med --
3 medication administration; is that correct?

4 A Yes.

5 Q Okay. In all -- on the night shift, other than the LPN,
6 who could do medication administration on your unit?

7 A No one.

8 Q Now, you said you never had a prior reprimand and -- well,
9 actually -- I'm gonna put that on hold for a minute.

10 MS. PENDER: Yeah --

11 MS. LANOUEETTE: I'm sorry --

12 MS. PENDER: -- I'm going to object to that.

13 JUDGE SANDRON: Okay.

14 MS. PENDER: On the grounds that it mischaracterizes her
15 testimony.

16 Q BY MS. LANOUEETTE: When you met with Ms. Carchidi and Mr.
17 Weir on November -- or you had a phone call on November 13th,
18 did Ms. Carchidi also raise with you that the complaint had to
19 do with how you spoke to neighbors?

20 A Not that I recall.

21 Q Did she or Mr. Weir offer you the opportunity to come into
22 the facility and make a written statement?

23 A No. Not that I recall.

24 Q Okay. At the meeting where you were terminated, did Mr.
25 Weir say the conduct could be reportable to the Department of

1 Health?

2 A No.

3 Q Okay. Ms. Carchidi, didn't -- or I'm sorry, Ms. Todd,
4 didn't Cindy Pope speak to you about the way you had spoken to
5 a neighbor on a prior occasion?

6 A Not that I recall. I would have to know the particulars.

7 Q And I can't see the neighbor's actual name, I can only
8 give you an initial. In October of 2019, did Cindy Pope meet
9 with you and Heather Britton, the social worker, about you
10 raising your voice to Neighbor J?

11 A I don't recall. I -- I don't recall the person. I don't
12 recall the conversation.

13 JUDGE SANDRON: I don't get the spelling of that other
14 name, Britton was it?

15 MS. LANOUEETTE: Yes. Heather is H-E-A-T-H-E-R. Britton
16 is B-R-I-T-T-O-N.

17 JUDGE SANDRON: Ms. Todd, you don't remember ever having a
18 meeting with the two of them concerning any kind of issue
19 related to that?

20 THE WITNESS: I don't recall, no.

21 Q BY MS. LANOUEETTE: Do you recall having a meeting here RN
22 Jennifer Candee --

23 MS. LANOUEETTE: Jennifer is J-E-N-N-I-F-E-R, Candee is
24 C-A-N-D-E-E --

25 Q BY MS. LANOUEETTE: -- spoke to you about the facts that

1 the patient, Neighbor R, was not to have to remain in a chair?

2 MS. PENDER: Is there a date or a time frame on that?

3 Q BY MS. LANOUEETTE: In October of 2019.

4 A To remain in a chair? To remain in a chair?

5 Q That that was not part of her care plan, to remain in a
6 chair?

7 A It was an independent unit. We didn't have anybody in a
8 chair. In a chair? Like a wheelchair?

9 Q Did -- did -- did Ms. Pope and Jennifer Candee speak to
10 you about not restricting a patient to a chair?

11 A We didn't have anybody restricted to a chair.

12 Q And weren't you told not to yell at a patient to stay in
13 the chair?

14 A We didn't have anyone in a chair. There was no
15 wheelchairs or -- it was independent --

16 Q I didn't say wheelchair --

17 JUDGE SANDRON: Oh, all right, but we'll --

18 Q BY MS. LANOUEETTE: Were you told not to yell at Patient J
19 and tell her she had to stay in a chair?

20 A No.

21 Q Okay. Were you evaluated as an LPN by your unit manager?

22 A Yes.

23 MS. LANOUEETTE: I'll try to screen share again. I didn't
24 do it right.

25 JUDGE SANDRON: Give you a moment.

1 Q BY MS. LANOUEETTE: I'm going to show you what has been
2 marked as Exhibit R-57.

3 MS. LANOUEETTE: And, Your Honor, the copy on the screen is
4 paginated. I will email the paginated copy to everyone at the
5 conclusion of today.

6 JUDGE SANDRON: Thank you.

7 Q BY MS. LANOUEETTE: And Ms. Todd, I'm just going to --
8 there's no other way to do this. I'm going to scroll through
9 this and ask you to look at it and tell me if you recognize
10 this as an evaluation you received.

11 JUDGE SANDRON: Counsel's going to scroll through the
12 whole thing so you can read all of it.

13 Q BY MS. LANOUEETTE: Do you recognize Exhibit R-57?

14 A I do.

15 Q Okay. And was this an evaluation you received from your
16 unit manager, Cindy Pope?

17 A Yes, it is.

18 Q Do you recall the conversation in which she gave you this
19 evaluation?

20 A Yes.

21 Q And do you recall becoming so angry during the evaluation
22 conversation that she had in the meeting?

23 A No.

24 Q Do you recall yelling at her?

25 A No.

1 Q What do you recall about the conversation?

2 A I recall -- we were discussing a CNA and how lack of
3 cares -- a couple of particular neighbors --

4 JUDGE SANDRON: Well, why won't you start from the
5 beginning. And -- and I think we need a foundation for the
6 conversation. I realize this is cross, but you're going into a
7 new conversation. So we need to really have the foundation set
8 out.

9 Q BY MS. LANOUEETTE: Ms. Todd, do you recall when you had a
10 conversation with Cindy Pope regarding the evaluation that is
11 marked as R-57?

12 A I don't recall the day, but it was the day that she gave
13 it to me.

14 Q And what do you remember discussing with regard to your
15 evaluation?

16 A We were discussing a particular CNA and the job that she
17 wasn't doing and --

18 JUDGE SANDRON: How did you -- who initiated that portion
19 of the discussion? I mean, you're saying there was another CNA
20 who was brought up. Who raised her up?

21 THE WITNESS: We were discussing -- when I was called in
22 for the evaluation --

23 JUDGE SANDRON: Right. Right.

24 THE WITNESS: -- and she was -- we were discussing the
25 can. And she felt that -- you know, when -- the CNA isn't

1 doing the job, then you write them up, right. So -- or you
2 have a verbal discussion with the CNA about the cares and --
3 that weren't being done. As a nurse, I tend to look at people
4 as if they were my own relatives. It upsets me when --

5 JUDGE SANDRON: Okay. Yeah. I'll tell you what. You
6 need to limit your testimony to, you know, who said what in
7 that conversation.

8 Q BY MS. LANOUEETTE: What, if anything, do you recall Ms.
9 Pope said to you about your performance?

10 A If you scroll down, I can't see it. Yeah, that's --
11 that's exactly what she said to me. She said that I take
12 things too personally.

13 JUDGE SANDRON: What did -- what did she say about that --
14 that comment about complaints from time to time related to CNA?
15 Do you -- do you recall what was said about that?

16 THE WITNESS: Yes. That's what I was saying. I -- I was
17 talking to her about a CNA and her lack of performance, and she
18 said, you know, I get upset because --

19 JUDGE SANDRON: All right. But you had complained to her
20 before the evaluation was prepared; is that correct?

21 THE WITNESS: Yes.

22 Q BY MS. LANOUEETTE: Did Ms. Pope discuss with you taking
23 things too personally by the neighbors?

24 A No. We were discussing this can, not the neighbors.

25 MS. LANOUEETTE: That's all the questions I have, Your

1 Honor.

2 JUDGE SANDRON: All right. Did you wish -- did you -- is
3 the signature on the document your signature? I don't know if
4 she heard me. Let's go back down to the end.

5 Is that your signature, Ms. Todd?

6 THE WITNESS: Yes, it is.

7 JUDGE SANDRON: Do you wish to offer the document?

8 MS. LANOUEETTE: We will offer R-57.

9 JUDGE SANDRON: All right. If there -- there are no
10 objections, Respondent's Exhibit 57 is received.

11 **(Respondent Exhibit Number 57 Received into Evidence)**

12 MS. LANOUEETTE: I have no further questions.

13 JUDGE SANDRON: Any redirect?

14 MS. PENDER: Just one question.

15 Dawn, do you want to stop sharing your screen? Thank you.

16 **REDIRECT EXAMINATION**

17 Q BY MS. PENDER: Ms. Todd, in October 2019, do you recall
18 being disciplined at all?

19 A October of 2019? No, I do not recall.

20 MS. PENDER: I have nothing further, Your Honor.

21 JUDGE SANDRON: And Ms. Tuminaro, do you have any
22 further --

23 MS. TUMINARO: No questions, Your Honor.

24 JUDGE SANDRON: Ms. Joslin?

25 MS. JOSLIN: No questions. Thank you.

1 JUDGE SANDRON: And Ms. Lanouette, any follow-up?

2 MS. LANOUEITE: No, Your Honor.

3 JUDGE SANDRON: All right. Ms. Todd, thank you.

4 You're -- you're done. So you might be potentially recalled by
5 the General Counsel, and she'll let you know if that's the
6 case. But otherwise you don't need to testify again. Thank
7 you.

8 THE WITNESS: Thank you.

9 JUDGE SANDRON: So it's now 4:11 p.m. I -- I don't know
10 if you have another witness, Ms. Pender, or if we should just
11 start tomorrow so that we can make sure we finish the witness
12 in terms of direct and cross all at once.

13 MS. PENDER: We have one further witness. It's our last
14 witness. He's prepared to go now. He's prepared to go
15 tomorrow. I think I have, like, maybe 20 to 30 minutes --
16 may -- probably 20 minutes of direct.

17 JUDGE SANDRON: Well, maybe then, if that's the case, we
18 can try to finish him today if you think he'll be done, you
19 know, around 5 --

20 MS. LANOUEITE: I -- I will fully say I have a fair amount
21 of cross for this witness, and a lot of documents to show him.

22 JUDGE SANDRON: Is this the la --

23 MS. PENDER: So then -- oh, sorry ---

24 JUDGE SANDRON: -- is -- is the last alleged
25 discriminatee?

1 MS. PENDER: This is the last General Counsel witness,
2 yes.

3 JUDGE SANDRON: All right. Well, then maybe we should
4 just start tomorrow, I think, rather than bifurcate --

5 MS. PENDER: Um-hum.

6 JUDGE SANDRON: -- the testimony, if we're not going to be
7 able to finish, you know, everything today.

8 MS. PENDER: Okay. I agree with that, yeah.

9 JUDGE SANDRON: So shall we start at 10 again tomorrow, if
10 that's a good time? I think it probably is. And then if the
11 parties need any prep time beforehand we start, you'll have it.

12 So okay. Well, I will see everybody then tomorrow at 10.
13 Have -- have a good evening.

14 MS. PENDER: Thank you, Your Honor.

15 JUDGE SANDRON: Resume tomorrow.

16 MS. PENDER: Thank you. Thanks, everybody.

17 JUDGE SANDRON: Off --

18 MS. LANOUILLE: Thank you, Judge.

19 JUDGE SANDRON: Off the record.

20 **(Whereupon, the hearing in the above-entitled matter was**
21 **recessed at 4:13 p.m. until Tuesday, January 26, 2021 at 10:00**
22 **a.m.)**

23

24

25

C E R T I F I C A T I O N

This is to certify that the attached proceedings, via Zoom Videoconference, before the National Labor Relations Board (NLRB), Region 3, in the matter of NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury and 1199 SEIU United Healthcare Workers East, Case Number 03-CA-252090, held at the National Labor Relations Board, Region 3, 11A Clinton Avenue, Albany, New York 12207, on January 25, 2021, at 10:13 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.

Thomas Baker

THOMAS BAKER

Official Reporter



OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

NCRNC, LLC d/b/a Northeast	Case Nos.	03-CA-252090
Center for Rehabilitation and		03-CA-254186
Brain Injury,		03-CA-255155

Employer,

and

1199 SEIU Unlimited Healthcare
Workers East,

Petitioner,

and

Tara Golden, an individual,

Petitioner.

Place: Albany, New York (Via Zoom Videoconference)

Dates: January 26, 2021

Pages: 186 through 403

Volume: 2

OFFICIAL REPORTERS
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(602) 263-0885



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

NCRNC, LLC D/B/A NORTHEAST
CENTER FOR REHABILITATION AND
BRAIN INJURY,

Employer,

and

1199 SEIU UNLIMITED HEALTHCARE
WORKERS EAST,

Petitioner,

and

TARA GOLDEN, AN INDIVIDUAL,

Petitioner.

Case Nos. 03-CA-252090
 03-CA-254186
 03-CA-255155

The above-entitled matter came on for hearing via Zoom videoconference, pursuant to notice, before **IRA SANDRON**, Administrative Law Judge, at the National Labor Relations Board, Region 3, 11A Clinton Avenue, Albany, New York 12207, on **Tuesday, January 26, 2021, 9:38 a.m.**

1 A P P E A R A N C E S

2 **On behalf of the General Counsel:**

3 **ALICIA PENDER**
4 NATIONAL LABOR RELATIONS BOARD
5 11A Clinton Avenue
6 Room 342
7 Albany, NY 12207
8 Tel. (518)816-0909
9 Fax. (518)431-4157

10 **On behalf of the Charging Party/SEIU:**

11 **AMELIA TUMINARO, ESQ.**
12 GLADSTEIN, REIF & MEGINNISS
13 39 Broadway
14 Suite 2430
15 New York, NY 10006
16 Tel. (212)228-7727
17 Fax. (212)228-7654

18 **On behalf of the Charging Party/Ms. Golden:**

19 **LISA JOSLIN, ESQ.**
20 **NANCY WILLIAMSON, ESQ.**
21 GLEASON, DUNN, WALSH & O'SHEA
22 40 Beaver Street
23 Albany, NY 12207
24 Tel. (518)432-7511
25 Fax. (518)432-5221

26 **On behalf of the Respondent/Employer:**

27 **DAWN LANOUE, ESQ.**
28 HINMAN, HOWARD & KATTELL, LLP
29 PO Box 5250
30 Binghamton, NY 13902-5250
31 Tel. (607)231-6917
32 Fax. (607)723-6605

33

34

35

36

37

38

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Joshua Endy	192	210,251	254,266	261,263	262
Patrick Weir	271,284,301, 311,317,319, 324,329,332, 343,346,363 367,370,375, 382,394,399				279,280, 299,309,310, 311,317,318, 320,322,329, 331,342,345, 362,367,370, 374,393,396

E X H I B I T S

<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
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24			
25			

1 P R O C E E D I N G S

2 JUDGE SANDRON: Is there any -- anything from any of the
3 cou -- counselors before we begin the testimony of the next
4 witness? Okay.

5 If there's nothing, Ms. Pender, do you want to call the
6 next witness for the General Counsel?

7 MS. PENDER: Yes, Your Honor. The General Counsel calls
8 Joshua Endy.

9 JUDGE SANDRON: Okay.

10 MS. HAMMONDS: I'm admitting him now.

11 MR. ENDY: Hello.

12 MS. PENDER: Hi, Josh. You just need to turn your camera
13 on.

14 MR. ENDY: Start video, okay.

15 JUDGE SANDRON: Oh, hi, Mr. Endy. This is Judge Sandron;
16 I'm the judge in this proceeding. So I'm going to go ahead and
17 swear you in. So if you'll raise your right hand.
18 Whereupon,

19 JOSHUA ENDY

20 having been duly sworn, was called as a witness herein and was
21 examined and testified, telephonically as follows:

22 JUDGE SANDRON: And could you please -- you can lower your
23 arm, that's fine.

24 Could you please state and spell your full and correct
25 legal name, and provide us with an address?



1 THE WITNESS: Joshua Endy, J-O-S-H-U-A E-N-D-Y. And 2005
2 Platte Clove Road, Elka Park, New York 12427.

3 JUDGE SANDRON: Okay. Could you - could you -- could you
4 spell the address and the city for those of us who are not --

5 THE WITNESS: Yeah.

6 JUDGE SANDRON: -- from New York.

7 THE WITNESS: 2005 Platte, P-L-A-T-T-E, Clove, C-L-O-V-E,
8 Road, Elka Park, E-L-K-A P-A-R-K.

9 JUDGE SANDRON: Thank you.

10 THE WITNESS: You're welcome.

11 JUDGE SANDRON: Ms. Pender, please proceed.

12 MS. PENDER: Thank you, Your Honor.

13 **DIRECT EXAMINATION**

14 Q BY MS. PENDER: Good morning, Mr. Endy.

15 A Good morning.

16 Q I'm going to ask you some questions this morning. If at
17 any time you can't hear me or you don't understand my question,
18 please let me know; I'm happy to repeat it for you. We are
19 being recorded by the court reporter to make a transcript, so
20 you need to give verbal answers. You can't just nod or shake
21 your head, you have to say yes or no.

22 A Okay.

23 Q Because we're on Zoom, there might be a bit of lag time
24 between us talking, so I'll ask that you let me get my full
25 question out before you respond. And I'll do the same; I'll

1 let you get your full answer out before I ask my next question,
2 okay.

3 A Okay.

4 Q Mr. Endy, are you familiar with Northeast Center for
5 Rehabilitation and Brain Injury?

6 A Yes.

7 Q How -- if I refer to it as Northeast, you'll know what I'm
8 talking about?

9 A Yes.

10 Q And how are you familiar with Northeast?

11 A They were my employer for around five years.

12 Q About when did you work there?

13 A September 2014 until November 11th, 2019.

14 Q And why did you stop working there on November 11th, 2019?

15 A I got fired for my union activity.

16 Q At the time that you stopped working at Northeast, what
17 was your job title?

18 A I was the backup CSS supervisor for overnights.

19 Q And what was your rate of pay?

20 A 13.78.

21 Q Is that per hour?

22 A Per hour. Yep.

23 Q And what was your weekly schedule?

24 A I worked 11 to 7 as my normal shift, but I always went in
25 at either 3, 5, or 7 p.m., and stayed until 7 a.m.

1 Q So your normal shift was 11 p.m. to 7 a.m.?

2 A Yes.

3 Q And about how many hours a week do you think you worked in
4 total?

5 A At least 55. 50 to 55 at least.

6 Q And what were your job duties as the CSS supervisor for
7 the overnight shift?

8 A I had to make the nightly schedule. Marcos made a list of
9 people that were go -- were going to be there that day and each
10 other day, and I had to give them their job duties for that
11 specific night.

12 Q Who is Marcos?

13 A He is the head of the CSS.

14 Q Do you know his last name?

15 A DeAbreu.

16 MS. PENDER: Okay. I believe the spelling of that is
17 already in the record.

18 A Yeah.

19 JUDGE SANDRON: Fine.

20 Q BY MS. PENDER: And what -- what else did you do?

21 A I had to hand the papers out -- well, the -- I had to hand
22 the assignment sheets out to each worker, and then I, myself,
23 had an assignment. We would finish the night, and at the end
24 of the shift I filled out my CSS shift sheets that -- at -- at
25 the end -- end of each shift there was two sheets we had to

1 fill out, and it took maybe a minute and a half to do both
2 sheets, sometimes less.

3 Q Did you always make the schedule?

4 A No. I was the backup supervisor. Josie Cruz was the lead
5 supervisor for the shift.

6 MS. PENDER: And I think the spelling of that is J-O-S-I-E C-R-
7 U-Z.

8 A Yes.

9 Q BY MS. PENDER: When -- when Josie Cruz was -- was working
10 the same night as you, what would you do?

11 A Whatever assignments she gave you.

12 JUDGE SANDRON: When she -- when she was on duty, how --
13 did your job duties differ at all from other people that --
14 with whom you were working when she was there?

15 THE WITNESS: No, I would be a regular CSS worker like
16 they were. I did whatever she gave me to do.

17 Q BY MS. PENDER: And on nights that Josie Cruz was there,
18 did you fill out any other paperwork?

19 A The nights she would leave early, because she had a lot of
20 health issues, she would ask me to fill out the -- the end
21 sheets at the end of the shift for the supervisors.

22 Q But if she was there for the whole shift, who would do
23 that?

24 A She would. I would hand my paper in at the end of the
25 shift, after I got relieved, and I would go home and clock out.

1 Q Did all CSS workers have papers that they needed to hand
2 in at the end of the shift?

3 A Yes. The assignment sheet that they filled out throughout
4 the -- the shift.

5 Q Tell me how the -- that assignment sheet works as a CSS
6 worker?

7 A The break sheet, you have to write down the -- the names
8 of each worker, the time you relieved them, and the time they
9 came back. And you have to do that for each worker. The IS
10 sheet, the increased supervision, there's a list of neighbors,
11 the patients that needed to be checked every 15 minutes. And
12 you would walk around the building, check on those neighbors,
13 and you would initial in each box for each 15 minutes.

14 Q And who --

15 A And --

16 Q -- fills that sheet out, that increased supervision sheet?

17 A Whatever worker's doing it.

18 Q So not necessarily a supervisor?

19 A No, no.

20 JUDGE SANDRON: Well, how --

21 Q BY MS. PENDER: If --

22 JUDGE SANDRON: -- how were assign -- maybe he can just
23 describe the assignment process. Was it -- did they have an
24 assignment sheet the week before or -- or who -- how is -- how
25 did the process work as far as assignments?

1 THE WITNESS: We -- we got the -- we made the assignment
2 lists that night, either me or Josie Cruz, and we were told by
3 Marcos to rotate everybody. Be -- before he told us to rotate
4 everybody, I placed them in where they were -- a position where
5 they were comfortable or where they worked best at.

6 Q BY MS. PENDER: Mr. Endy, when did Marcos DeAbreu tell you
7 to rotate people?

8 A I'd say maybe a year before I got walked out. It lasted
9 for about a month, month and a half, and then it stopped. We
10 went back to how we were doing it before.

11 Q If -- if you know, if neither you nor Josie Cruz were
12 present, who would do the supervisor duties?

13 A Anita Rogers.

14 Q And at the time you worked at Northeast, was she a
15 supervisor?

16 A She was just a regular worker.

17 JUDGE SANDRON: Do we have her -- her spelling in the
18 record, her last name?

19 MS. PENDER: I can give it. It's Anita, A-N-I-T-A,
20 Rogers, R-O-G-E-R-S.

21 JUDGE SANDRON: Okay. Thank you.

22 Q BY MS. PENDER: Mr. Endy, are you familiar with 1199 SEIU?

23 JUDGE SANDRON: Well --

24 A Yes, I am.

25 JUDGE SANDRON: Before we -- before we go further, I just

1 want to -- do we have an issue of whether he's -- was a
2 statutory supervisor?

3 MS. PENDER: Yes, Your Honor.

4 JUDGE SANDRON: Okay. Then I think we need -- I think
5 we're -- at some point more information about, you know,
6 whether he had any indicia and how often he exercised that
7 authority. But if you want -- if you want to go forward with
8 another line, that's fine, but I think we're going to have to
9 get that.

10 MS. PENDER: Right. My understanding is that as
11 Respondent is the party claiming he's a supervisor, it's
12 Respondent's burden to -- to prove.

13 JUDGE SANDRON: All right. All right. That's fine.

14 Q BY MS. PENDER: Mr. Endy, if I -- if I refer to 1199 SEIU
15 as the Union, will you know what I'm talking about?

16 A Yes.

17 Q How are you familiar with the Union?

18 A That is the Union that me and a few coworkers tried to get
19 to support the building.

20 Q What -- what building?

21 A The Northeast Center.

22 Q What do you mean by tried to get them to support the
23 building?

24 A Tried to get them in the building. We had -- we tried to
25 get people to sign --

1 Q All right.

2 A -- all the (audio interference) cards.

3 Q Can you -- you broke up a little bit. Can you repeat
4 that?

5 A That's the -- the un -- the Union that we tried to get
6 into the building to help support the workers and make the job
7 better and safer for everybody.

8 Q When did you become involved in that effort?

9 A From the beginning. I believe it was around August,
10 September, maybe.

11 Q Of what year?

12 A 2019.

13 Q And for how long were you involved in that effort?

14 A Up until I got -- well, up until about a month after I got
15 fired.

16 Q What action -- what action, if any, did you take in
17 support of the union effort?

18 A I handed out authorization cards for the Union. I
19 educated people to the best of my knowledge about the Union.
20 And I collected the cards that people signed, if they wanted
21 to.

22 Q Anything else you recall?

23 A Not that I remember, no.

24 Q Did you attend any shift changes?

25 A Yes, I did.

1 Q Do you remember when you attended a shift change?

2 A It was usually during the late afternoon, early evening.

3 Q Do you remember any specific dates that you were -- you
4 were there?

5 A No -- no, I don't.

6 Q Do you remember about how many shift changes you attended?

7 A I'd say about five, all together.

8 JUDGE SANDRON: Okay. I think we need a little more
9 detail from him about the shift changes and what they were.
10 Even though we've had testimony from other witnesses, we -- we
11 should get that from him also.

12 Q BY MS. PENDER: What did you do at the shift change?

13 A We would talk about anything new that was going on. We
14 would try to think of anybody else that would be willing to
15 sign a card -- an authorization card. We would talk about the
16 next steps in the -- the process; talk about our chances of
17 completing that -- that step.

18 JUDGE SANDRON: Well, where -- where -- where did these
19 take place?

20 THE WITNESS: They took place at Angela's Pizza in
21 Kingston, and outside of the parking lot at -- at the Northeast
22 Center, out at the road.

23 Q BY MS. PENDER: About how many times did you -- did you go
24 to Angela's Pizza?

25 A Three.

1 Q And about how many times --

2 A Two or three.

3 Q And about how many times did you go to -- to -- by the
4 parking lot at the facility?

5 A The same, about two or three.

6 Q And when you were at the facility, where would you
7 physically be?

8 A We would be out on the -- the side road, in the grass.

9 Q And about how many people attended those side-road
10 actions?

11 A Including the Union workers, maybe five to ten.

12 Q What about at Angela's Pizza, about how many people would
13 be there?

14 A The same.

15 JUDGE SANDRON: And is it the same people, the employees
16 and representatives of the Union?

17 THE WITNESS: Most of the time, yes. Yes.

18 JUDGE SANDRON: Now, you say you handed out authorization
19 cards?

20 THE WITNESS: Yes.

21 JUDGE SANDRON: Where did you do that?

22 THE WITNESS: I would meet people at the gas station. I
23 was friends with a lot of the -- the -- my coworkers there.
24 Anywhere where I would run into people, pretty much. At the
25 store.

1 JUDGE SANDRON: Was that off -- off the premises -- off
2 the company's premises?

3 THE WITNESS: Yes. Yes.

4 JUDGE SANDRON: Did you -- okay.

5 Q BY MS. PENDER: Mr. Endy, I'm going to direct your
6 attention to November 11th of 2019. Tell me -- can you tell me
7 what happened that day?

8 A I came in at 3 p.m. to work a double. I was --

9 Q What is a double? How long were you going to work?

10 A 16 hours. I was placed in NBI, the locked unit.

11 Q Who placed you in NBI?

12 A Charnita.

13 Q Who's Charnita.

14 A She is the 3 to 11 supervisor for CSS.

15 Q Do you know how to spell her name?

16 A I do not, no.

17 Q Do you know her last name?

18 A Charlice (phonetic), I think.

19 JUDGE SANDRON: Well, maybe --

20 A Carlis (phonetic) or Charlise (phonetic).

21 JUDGE SANDRON: Maybe -- maybe Ms. Lanouette can help us
22 with that.

23 MS. PENDER: Yeah.

24 JUDGE SANDRON: If -- if you have it readily available.

25 MS. LANOUELLE: I -- I do not have it readily --

1 JUDGE SANDRON: All right.

2 MS. PENDER: I can give you --

3 MS. LANOUEITE: I can find it, I'm sure.

4 MS. PENDER: I can -- I think I found it in a document. I
5 can give you what I found, and if I'm wrong, we can correct it.
6 But my understanding is it's C-H-A-R-N-I-T-A, last name
7 C-A-R-L-I-S-L-E.

8 JUDGE SANDRON: Okay.

9 MS. PENDER: Charnita Carlisle. Okay.

10 JUDGE SANDRON: Thank you. That's fine.

11 Q BY MS. PENDER: What happened next, Mr. Endy?

12 A I went up to the NBI to perform my duty for that shift.
13 And I ordered food at a -- and it got to the building around
14 7:00. I went --

15 Q In the evening?

16 A -- down to -- yes. I -- I went downstairs to the front
17 lobby to get my food, and on the way down I ran into Marcos.
18 And he asked me to follow him. I told him that I had just
19 ordered food, if I could go get it first before I meet him to
20 talk with him. He said that was fine, to meet him at the
21 administration suites afterwards. So I went got my food, went
22 to the suites. And he went -- o -- opened the door for me. We
23 walked into the -- the one room that we usually had the
24 meetings in.

25 Q Do you know what that room is called?

1 A I just know it's in the administration suites; that's all
2 I know.

3 Q Okay. What happened next?

4 A And I walked in and all the -- the corporate workers were
5 in there.

6 Q Who were -- what corporate workers?

7 A The only one that I know his name now was Keith. I
8 didn't -- I didn't know anybody else's name there.

9 Q When -- at the time, when you walked into the room, how
10 did they identify themselves to you, if at all?

11 A They didn't.

12 Q Had you ever seen any of them before?

13 A Yes.

14 Q Where had you seen them?

15 A Walking around the building, talking to people, and other
16 meetings to try to get people to be against the Union, to not
17 want them.

18 Q So the corporate people that you saw when you went to meet
19 with Marcos on -- on November 11th, you had seen them in the
20 building at other meetings, and -- and walking around talking
21 to people?

22 A Yes. Yes.

23 Q And who else besides --

24 JUDGE SANDRON: Just to clarify. Those were meetings that
25 the company held with employees?

1 THE WITNESS: Yes.

2 JUDGE SANDRON: When you say --

3 Q BY MS. PENDER: Who -- who else besides the -- how many
4 corporate people were there?

5 A I'd say three or four.

6 Q And --

7 A And then me and Marcos.

8 Q Anyone else there?

9 A No.

10 Q And what happened?

11 A And I sat down in -- in a seat across the table from
12 everybody. And the one corporate worker, Keith, asked me if I
13 knew what I was here for. I said no. And he said my union
14 activity. He asked me if my phone was on or if I was
15 recording. I said no, it's not. He asked if he could see my
16 phone, and I said no.

17 And he said, do you know what you're doing is illegal?
18 And I said, what am I doing? And he said, you're handing out
19 union cards -- union -- union authorization cards. I said, I
20 didn't think it was illegal, no. He said, it is, and the Union
21 and the corporation can sue that -- they were going to sue me
22 for it, he said, so be ready for -- for court. And then I -- I
23 said, okay.

24 And he asked me something, and I started saying something,
25 and he said to shut the fuck up; that he didn't want to hear

1 it; that I wasn't there to talk. So I stopped talking.

2 And then he continued asking me questions, asking if I
3 knew who -- who else was handing out cards, if I knew who was
4 signing cards. I told him I wasn't answering that question.
5 He looked at Marcos and he said, is this really who you want to
6 be the -- the supervisor; that this is really who you hired to
7 be the supervisor for the overnight shift? And Marcos just put
8 his head down and nodded his head.

9 And at the end of the -- at the end of Keith talking, he
10 looked at Marcos and said, well, what -- what's going to happen
11 next? And Marcos said, we have to suspend him pending
12 investigation. So Marcos and Keith decided that Marcos was
13 going to suspend me. So he told me I was suspended. And I
14 asked if that was it. And he said yes.

15 So I slid my badge across the table, because once you're
16 fired or suspended, you have to hand your badge in. So I slid
17 it across the table to him. It didn't fall off the table or
18 anything. And I got up and followed Marcos out -- well, Marcos
19 followed me out.

20 I opened the door. And most of the doors they have --
21 they're hydraulic doors, so they open -- they don't open hard,
22 they just swing so -- softly open, and they close the same way.
23 And this one did not. So it opened a little faster, and I
24 wasn't expecting it, so it -- it barely hit the -- the wall,
25 but it did hit the wall. And we walked out. He didn't say

1 anything.

2 I asked him if I could go upstairs to get all my
3 belongings off of NBI because that's where I was working so I
4 left everything up there. And he followed me upstairs to the
5 NBI. He badged me into the unit so I could get everything.
6 And then he walked me out the back door afterwards, and he
7 didn't say anything at all. It was silent the whole -- the
8 whole walk.

9 Q During that meeting did Keith ask you anything about the
10 Union?

11 JUDGE SANDRON: All right. All right. I think you have
12 to exhaust his recall --

13 MS. PENDER: Okay.

14 JUDGE SANDRON: -- you know, before you can ask him more
15 directed questions.

16 Q BY MS. PENDER: Mr. Endy, do you recall anything else
17 happening during that meeting?

18 A No, not that I remember.

19 Q Do you recall any other questions you were asked?

20 A Not off the top of my head, no.

21 Q Did anyone ask you anything about the Union?

22 A They asked me why I wanted the Union there if I liked my
23 job, and I said I was trying to make it better and safer for
24 everybody.

25 Q Who asked you that?

1 A Keith, the -- he was the only one that talked in the
2 meeting.

3 Q Did he respond to what you said?

4 A He said if -- if you don't like your job the way it is,
5 why don't you fucking leave? And I said, because I -- I need
6 my job. I have a family to support.

7 Q Describe for me, if you can, your demeanor during that
8 meeting.

9 A I was sitting back all the way in the chair. Like, my
10 back was all the way against the back rest. I had my arms
11 crosse, part of the time, and they were on the hand -- the
12 armrest the rest of the time. And I was talking the way I am
13 now. I was -- I was upset because I -- I knew what was most
14 likely going to happen, and I didn't want it, but I figured it
15 would happen.

16 Q After the November 11th, 2019 meeting, what, if anything,
17 did you do?

18 A I called the Northeast Center, I'd say, two or three
19 times. I left a couple of voicemail -- mails on Patrick Weir's
20 voicemail. And I called and got a hold of the front desk one
21 time, and they hung up on me after I told them who it was.

22 Q Why did --

23 A Because I was trying --

24 Q -- you call?

25 A I was trying to see if they had come to a conclusion about

1 the investigation on my suspension.

2 Q And --

3 JUDGE SANDRON: Do we have that spelling -- is that Mr. --
4 you say Leer?

5 THE WITNESS: Weir.

6 MS. PENDER: Oh, Weir -- Patrick Weir.

7 JUDGE SANDRON: Oh, Patrick Weir.

8 MS. PENDER: Yeah.

9 JUDGE SANDRON: Okay. We have that, yes.

10 MS. PENDER: Yeah.

11 Q BY MS. PENDER: And did you ever get any kind of
12 confirmation about your suspension?

13 A I got a letter in the mail about a month after they walked
14 me out saying that I was terminated on November 11th.

15 Q Prior to November 11th, 2019, in your time working at
16 Northeast, had you ever been suspended before?

17 A No.

18 MS. PENDER: I have nothing further for this witness at
19 this time, Your Honor.

20 JUDGE SANDRON: And I think we have the termination letter
21 already, that's Joint Exhibit 4?

22 MS. PENDER: That's correct.

23 JUDGE SANDRON: So it's in the record.

24 MS. PENDER: Yeah.

25 JUDGE SANDRON: Do counsels for either of the Charging

1 Parties have any questions for the witness.

2 MS. TUMINARO: I just have one question, Your Honor.

3 **CROSS-EXAMINATION**

4 Q BY MS. TUMINARO: Mr. Endy, why did you want a union at
5 Northeast?

6 A Because the -- the -- we were -- the whole building was
7 very short-staffed every -- it wasn't a very safe environment
8 to work in. And the pay and the health benefits weren't very
9 good at all for the work we had to do.

10 Q Mr. Endy, you indicated that the -- the short-staffing
11 made it not a safe environment. Can you just explain to us why
12 that is?

13 A There -- there were nights where one person was in NBI by
14 themselves with 20 violent sexual predators and neighbors and
15 it's -- it's -- it's -- it wasn't safe. People were getting
16 hurt all -- all the time. And if something happens, they'd be
17 up there by themselves. If there was a code -- most of the
18 time I was with the CVO or doing a job, and if there's a code
19 rainbow, which I -- I'm -- if I'm supervising that night, I'm
20 supposed to go to, I have to find somebody to watch - to -- to
21 do my job before I could go anywhere.

22 Q Mr. -- Mr. Endy, you've used a couple of acronyms I just
23 want you to explain to us. What is NBI?

24 A That's the -- the locked unit.

25 Q And -- and why -- do you know what it stands for?

1 A I don't remember, no.

2 Q What kind of residents or neighbors are in the locked
3 unit, Mr. Endy?

4 A Sexually inappropriate neighbors and violent neighbors to
5 themselves and others, and that's -- there was a couple there
6 with dementia that would wander and get - it would get them in
7 trouble because they would wander, so they put them there.

8 Q And what is CVO?

9 A That's a one-on-one. That's like a direct observation.

10 Q Do you mean that one staff person must directly observe
11 a -- a neighbor --

12 A Yes.

13 Q -- or resident?

14 A Yes.

15 MS. TUMINARO: I don't have any further questions. Thank
16 you.

17 JUDGE SANDRON: Ms. Joslin?

18 MS. JOSLIN: I have no questions, Your Honor, thank you.

19 JUDGE SANDRON: Question, if you know, who -- who decides
20 which neighbors go into NBI?

21 THE WITNESS: The --

22 JUDGE SANDRON: If you know?

23 THE WITNESS: Marcos and all - all the other higher-ups.

24 JUDGE SANDRON: Is that -- is that determined by the
25 facility or by -- by courts or who would be --

1 THE WITNESS: The facility.

2 JUDGE SANDRON: Facility determines on a case-by-case
3 basis?

4 THE WITNESS: Yeah, yeah.

5 JUDGE SANDRON: I think then we're ready for cross-
6 examination. I -- I know Ms. Lanouette had requested Jencks
7 statements.

8 So I don't know if you have them already or if there are
9 additional ones.

10 MS. PENDER: I believe that you have them already. They
11 were both with the district court filing. But I can resend
12 them if you don't have them handy.

13 MS. LANOUEETTE: So I have one signed 11/26/19, page 4 --
14 four pages.

15 MS. PENDER: The time --

16 MS. LANOUEETTE: One signed 1/9/20.

17 MS. PENDER: Yes. Yep, both of those are correct. That's
18 it.

19 MS. LANOUEETTE: Okay. Then I would just request maybe
20 five minutes?

21 JUDGE SANDRON: How long is the second one, just pages?

22 MS. LANOUEETTE: Four pages.

23 JUDGE SANDRON: Both are four pages?

24 MS. LANOUEETTE: Yes.

25 JUDGE SANDRON: All right. Do you want -- all right.

1 Well go off the record for a few minutes.

2 MS. LANOUEETTE: Just -- just five minutes is fine, Your
3 Honor.

4 JUDGE SANDRON: All right, fine. We'll go off the record,
5 then, for five minutes.

6 (Off the record at 10:34 a.m.)

7 JUDGE SANDRON: Back on the record. Cross examination.

8 **CROSS-EXAMINATION**

9 Q BY MS. LANOUEETTE: Good -- good morning, Mr. Endy. My
10 name is Dawn Lanouette.

11 A Good morning.

12 Q I represent Northeast facility. Can you tell me, what
13 training do CSS workers receive for their job?

14 A MANDT training.

15 Q And -- and what is that, for the judge's benefit?

16 A That's basically trying to deescalate by talking to people
17 to get them to calm down, or if you can't, they teach you a
18 certain -- certain holds and ways to get out of -- like, if a
19 neighbor grabs you by the hair, they teach you how to get out
20 of that, or how to hold a neighbor safely so you and the
21 neighbor doesn't get hurt.

22 Q And you mentioned a few codes during your testimony. For
23 clarification of the record, what is a code rainbow?

24 A A code rainbow is, like, violence, or somebody, like,
25 verbally attacking somebody and not calming down.

1 Q And when a code rainbow is called, who responds to that,
2 if --

3 A The supervisors on the shift, the nurses. Anybody that
4 has time and is able to help.

5 Q What is a code moon?

6 A A code moon is if they can't find the neighbor.

7 Q And when a code moon is called, what -- what happens?

8 A They -- depend -- well, on the -- on the overnight shift,
9 they go and they look in all the rooms and they count how many
10 people they're supposed to have that night, and they go and
11 count how many people are in the beds. And that's -- if they
12 find out that it's the neighbor that's missing on one unit,
13 then by checking all the rooms, they usually find them.

14 Q If it's the night shift and somebody has to look outside
15 for the neighbor, who -- who takes that role?

16 A The supervisor, or if there's a break person, the nursing
17 supervisor. Any CNAs or nurses that have time to help. We
18 call the cops. After they get the --

19 Q Nursing --

20 A -- (Indiscernible, simultaneous speech).

21 Q The nursing supervisor can't leave the building, though,
22 right?

23 A They can't leave the property, no. They usually stay
24 within the -- there's a sidewalk that goes around the building
25 that usually they stay there. They don't go past that.

1 Q I -- I had some confusion about your testimony regarding
2 rotation of assignments. You said that that lasted about a
3 month and a half, and then it went back --

4 A Oh --

5 Q -- the way it was.

6 A Yeah.

7 Q What are you referring to when you said the way it was?

8 A Placing people where they're comfortable; placing people
9 where they're -- where they're good at.

10 Q So let me ask you then, what are the assignments that you
11 have to make -- or - or suppose -- I -- I understand sometimes
12 you're short-staffed. What are the assignments that ideally
13 the CSS supervisor makes each night?

14 A IS, breaks, CVO, front desk.

15 JUDGE SANDRON: Okay. And -- and how many people
16 ordinarily work on the shift, you know, all together?

17 THE WITNESS: Anywhere from 3 or 4 to 10 to 12, depending
18 on the day.

19 Q BY MS. LANOUE: And does that depend in part on how
20 many CVOs there are?

21 A No, they're -- we've had three people do seven jobs
22 before.

23 Q I understand, but you said sometimes there's as many as 10
24 or 12 people --

25 A Yeah. It depends, because the --

1 Q -- who call-in --

2 A That -- there -- there's certain days where everybody that
3 work overnight CSS is scheduled, and then there's certain days
4 where there's half scheduled, and there's certain -- like, on
5 the weekends, we had, usually, about, like, anywhere from three
6 to five people while I was working there.

7 JUDGE SANDRON: Do you -- why -- do --

8 A That all depends on the day of the week.

9 JUDGE SANDRON: Oh -- oh, do you know why there's such a
10 variation in numbers?

11 THE WITNESS: My guess is to make sure everybody gets the
12 days off -- like, the amount of days off they're supposed to,
13 but I -- I don't make that, the week-to-week schedule, so I --
14 I don't know.

15 JUDGE SANDRON: So who -- who -- if you know, who -- who
16 decided how many people would work a particular --

17 THE WITNESS: Marcos.

18 JUDGE SANDRON: Marcos made the schedule --

19 THE WITNESS: Yeah.

20 JUDGE SANDRON: -- as far as numbers?

21 THE WITNESS: Yeah. Yeah.

22 JUDGE SANDRON: Remember -- remember, you've got to say
23 yes.

24 THE WITNESS: Yes. Yes. Sorry.

25 JUDGE SANDRON: Thank you.

1 Q BY MS. LANOUEETTE: What would make somebody make somebody
2 good at the NBI unit or the locked unit?

3 A If they're -- if you're up there long enough, you build
4 bonds with neighbors. You learn their triggers. You know how
5 to deescalate them. You -- I want to -- like --

6 Q Sorry. Go ahead please.

7 A You become comfortable around them. You -- you -- you
8 learn pretty much every -- everything about them, so it makes
9 it easier to -- to deal with them and to calm them down, to
10 keep them occupied, happy, keep them away from their triggers.

11 JUDGE SANDRON: All right. If you -- if you can answer
12 it, are -- are they long-term? Are -- are most of the
13 neighbors, like, long-term there, or -- or short-term?

14 THE WITNESS: While -- while I was there, they were --
15 they -- they were definitely long-term, yes. There was only a
16 couple neighbors that left after a short period of time.

17 JUDGE SANDRON: So would -- would you say most -- most of
18 them stayed for -- for a period of months? Would that be
19 accurate?

20 THE WITNESS: Years.

21 JUDGE SANDRON: Years.

22 THE WITNESS: Years, yeah.

23 Q BY MS. LANOUEETTE: Are there things that would make a CSS
24 worker not suited to the NBI unit?

25 A If they were -- if they got scared easy, if they were - a

1 - a lot of girls didn't like being up there because there are
2 sexual, I guess, predators there. The way they talked to
3 women, the way that they were around them, that they -- how --
4 how they acted around them. And with the guys, it's basically
5 if -- if they were scared, they would -- it was like being in
6 jail with some of them. If they could sense you were scared,
7 they took advantage of that.

8 Q Was it better to put your more experienced employees on
9 NBI?

10 A It was better, yes, but it was -- it's also good to have
11 some kind of knowledge about NBI. So every -- everybody worked
12 in NBI, but if there was, like, a female or somebody new, they
13 weren't ever up there -- I -- I'd never place them up there by
14 themselves. They were always with somebody that was experienced
15 and knew what they were doing.

16 Q CVO is closed visual observations, or we call --

17 A Yes.

18 Q -- one-on-one. What made somebody good at doing a CVO?

19 A If they were good at calming them down, or if they had a
20 lot of energy and they couldn't sit still, they always could
21 think of things to keep them occupied so they weren't running
22 around getting in trouble. Basically learning everything about
23 them. You -- you -- you're -- you're with them enough, you --
24 you learn a lot about them. And they learn about you, and they
25 learn to trust you.

1 Q Were there some staff that just didn't get along with some
2 neighbors?

3 A Of course, but that was on every department. That --

4 Q Would you try to avoid putting a staff who didn't get
5 along with a neighbor as the CVO?

6 A Yes. Yes.

7 Q Was there anything that made someone particularly good at
8 the front desk?

9 A No. There was people that preferred the front desk, but
10 there was nobody that was particularly good at it.

11 Q Do -- do the front desk workers on the night shift
12 eventually have to take over the phones for the facility too?

13 A They're the ones that answer the phones when the -- when
14 somebody calls the facility, and they open the -- open the door
15 for the people to come in. And they make sure nobody can leave
16 the building -- no neighbors can leave the building. And
17 they -- they're the ones that call the codes too.

18 Q Okay. You said there were some people who preferred the
19 front desk?

20 A Yes.

21 Q Were there people who preferred not to have the front
22 desk?

23 A Yeah. Yes.

24 Q Okay. Did every -- was everyone successful at operating
25 the phones?

1 A Most of them, yeah. There -- there were people that we
2 tried to keep on NBI, because that's where they preferred, and
3 that's where -- depending on where everybody was and depending
4 on who was working, it was -- the -- the people that worked the
5 front desk, it was probably about three to four people I tried
6 to keep there, because they -- they were good at it because
7 they always switched the phone systems, and it -- it's not very
8 easy. I had trouble doing it. And some people just aren't
9 good with technology, such as myself. Because it's -- it's a
10 whole computer, it's not just a phone. It's a computer that
11 you have to do.

12 Q But you were somebody who was very good at NBI, for
13 instance? Where you had a --

14 A Yes. Yes.

15 Q -- relationship with those neighbors?

16 A Yes, I was in NBI a lot.

17 Q Increased supervision. I think you -- did I lose you?

18 A Yeah, I got a phone call. Sorry. I'm on my phone.

19 Q That's okay. Increased supervision, I -- I -- can you
20 explain what you have to do when you're assigned to increased
21 supervision?

22 A When you're -- when you're doing IS, you have to go unit-
23 to-unit, and there's a list of names on each unit that you have
24 to check. You get to the room; knock on the door. You have to
25 go -- you have to say, CSS coming in. You open the door.

1 You -- you look to make sure -- on -- on the overnights, you
2 look to make sure they're in their -- in their room or in their
3 bed, and that they're -- if they're in their bed sleeping,
4 you've got to look -- you're supposed to look to see if you can
5 see their chest moving to make sure they're breathing. And you
6 close the door or leave it there and go to the next one. And
7 you initial after each room you check, each person on the
8 paper.

9 Q And you do that all night for your whole shift, right?

10 A All night.

11 Q Are there things that make somebody better at doing IS?

12 A Not really.

13 Q Would you ever consider if somebody was having -- was
14 tired from having worked a double --

15 A Yeah.

16 Q Okay.

17 A Yeah.

18 Q What would you consider about that?

19 A Some people wanted IS so they could stay awake. Some
20 people didn't want IS because, say, they did IS the first --
21 the first shift that they worked a double. Some people have
22 another job and they just got done working that job, so they
23 would ask to do a CVO or NBI so they weren't walking around the
24 whole day from that job and their other job. And if we were
25 short, it was easier to have somebody doing IS that was able to

1 go to the -- the codes if need be, if there was a code.

2 Q So that might be you as the supervisor, or Josie --

3 A Or Josie, or -- yeah. Some -- somebody that was able
4 to -- and -- and knew -- knew what they were doing at a code.

5 JUDGE SANDRON: Do any of those jobs that you mentioned,
6 those different job assignments, do any of them require, to
7 your knowledge, special training or education, you know, to
8 perform any of them?

9 THE WITNESS: No. Everybody that -- the only training we
10 got was MANDT training, and that's the only thing they -- they
11 need.

12 JUDGE SANDRON: What kind of training was that?

13 THE WITNESS: MANDT, M-A-N-D-T.

14 JUDGE SANDRON: And -- and what does that stand for?

15 THE WITNESS: I don't remember.

16 JUDGE SANDRON: All right. And -- and is -- is it correct
17 to say that the rainbow and the moon codes, those are
18 considered emergency-type codes?

19 THE WITNESS: The -- the rainbow definitely. The moon was
20 more at night. It was more the nurses and the CNAs that dealt
21 with the moons, because everything -- all the activities, they
22 were all closed, so they should all be on the unit. On the
23 overnights, it was base -- it was just the -- the -- the angels
24 and the rainbows that we dealt with most of the time.

25 JUDGE SANDRON: What was the angels code? That was --

1 THE WITNESS: Angels is if somebody falls.

2 JUDGE SANDRON: Oh. So yeah, I believe we had testimony
3 about that earlier.

4 THE WITNESS: Yes. Yeah.

5 JUDGE SANDRON: Thank you.

6 THE WITNESS: You're welcome.

7 Q BY MS. LANOUE: Now you said -- let me make sure I
8 understand how the shift works for scheduling. How -- how many
9 shift supervisors are there for CSS per shift?

10 A Two.

11 Q Two. And I know you worked a lot of overtime, but
12 normally, how many days a week are CSS supervisors scheduled to
13 work?

14 A I work -- I was working five days a week, sometimes six.
15 I tried not to work my days off. And Josie was there five days
16 a week.

17 Q So at least two days a week, you're the only supervisor on
18 the shift?

19 A Yes. Yes.

20 Q On the night shift, other than the CSS supervisor and the
21 nursing supervisor, is there any other supervisors in the
22 building, typically?

23 A Usually, no, unless there was a -- a unit manager that was
24 working on their -- on their unit that night. But usually, no.
25 Or sometimes Marcos had to work an overnight because we were

1 short-staffed. But other than times like that, no.

2 Q But let me ask you about Marc -- how would he know that he
3 had to work an overnight?

4 A We would have to call him after we went through all of
5 our -- all of our other options, asking people from previous
6 shift or asking people from the morning shift to come in early
7 for an overnight, or talking to the nursing supervisor to see
8 if they had anybody we can use. And if everybody said no, then
9 we would call Marcos, if it was, like, a need-need situation.

10 Q And when you say, we would do this, who -- who did that?

11 A Whoever the supervisor was at the time, either me or
12 Josie.

13 Q I want to show you a few documents so that the Court has
14 the benefit of understanding them better. Give me just one
15 second. I'll try to make it bigger. Mr. Endy, do you
16 recognize what has been marked as Exhibit 44, page 1?

17 A That's -- that's a break sheet.

18 Q Okay. And I just want to walk through it so -- so it's
19 clear to the Court. The day at the top, is that the day that
20 you're making the break sheet for?

21 A Yes.

22 Q And then the CSS supervisor in this case was you?

23 A Yes.

24 Q Okay. And the shift is already filled in, 11 to 7.

25 And --

1 A Yes.

2 Q -- this -- these columns over here on the side,
3 Assignment, CVO, Staff Assigned, is that where you make your
4 assignments?

5 A Yes.

6 Q Okay. So the first one on this case, NBI, IS, what is
7 that?

8 A That's where you do the 15-minute checks on the neighbors,
9 but you do every -- every single neighbor that is in NBI when
10 you do the checks.

11 Q Okay. And therapeutic support, what is that? Oh, and
12 there's a -- initials there, right? DR?

13 A Yeah, that's -- that's like -- because Dave -- David Roth
14 (phonetic), the neighbor, he was CVO but only until a certain
15 time. I think he got done at, like, 3 in the morning or
16 something like that, and then he was done. So then she --
17 the -- that -- that worker would be his CVO until that time.
18 And then she would stay on that unit and help with any --
19 anything they needed help with, or if there was anything else
20 in the -- that was going on in the building, she would go to
21 it.

22 Q Okay. And CVO JC and SM -- the -- the JC says IS, and
23 that means that you did not have enough workers, so --

24 A Yes.

25 Q -- (Indiscernible, simultaneous speech) the rotating

1 supervision?

2 A Yes. Yes.

3 Q And who makes that decision, that he can be put on the
4 rotating decision? Excuse me. Who makes --

5 A Bless you.

6 Q -- the decision -- thank you. Who makes the decision --

7 A The supervisor and the nursing supervisor.

8 Q Okay. Thank you. And then SM had an assigned CVO; is
9 that right?

10 A Yes. Yes.

11 Q Okay. I think you explained that if you have to take
12 something as a supervisor, IS works best because you can leave
13 it and come back to it?

14 A Yes.

15 Q It looks -- it looks like you did that this night?

16 A Yes.

17 Q And then you had a couple of other CVOs that you assigned,
18 again, one to IS and one --

19 A Yeah.

20 Q -- to an employee. Is that what that says?

21 A Yes.

22 Q Okay. And then in this case, Josie was working and was
23 assigned to the front desk; is that fair to say?

24 A Yes.

25 Q Okay. Did you often start your shift before Josie came

1 in?

2 A Yes. She came in late quite often and/or leave early
3 often, so she would call work and ask if I can start the
4 paperwork and everything because she would be late.

5 Q I think you said sometimes you -- you started at 3 or 5
6 because you were helping out the shift before too?

7 A Yes. Yes. But I only help out on the overnight if,
8 like -- say I -- I would -- I would wait until 11 or a couple
9 minutes after, if she wasn't there, then I would start the
10 papers so the 3 to 11 shift can leave.

11 Q All right. I -- I have a question about page 2 of Exhibit
12 44. This one, Josie is assigned to break staff. What did that
13 person do?

14 A They gave all the CSS workers breaks that night, their 15-
15 minute breaks and then their lunch break.

16 Q And fair to say, if you were short-staffed, that might be
17 something you did not assign someone to do?

18 A Yes.

19 Q Were there times when you were the supervisor that you did
20 both IS and break staff?

21 A Yes.

22 JUDGE SANDRON: Now, there were -- oh, there are a number
23 of notations here refused on that page. What -- does that mean
24 the person refused to do -- or can you explain what that
25 represents?

1 THE WITNESS: That means that Josie asked them if they
2 wanted a break, and they said, no, they were fine.

3 JUDGE SANDRON: Oh, I see. Thank you.

4 THE WITNESS: You're welcome.

5 Q BY MS. LANOUEETTE: So I want to show you what's been
6 marked as page 4 of Exhibit R-44. And ask, does this reflect a
7 night where Josie was not working?

8 A Either a night where she wasn't working or a night she
9 called out.

10 Q Okay. I noticed on here that Michael (phonetic) is
11 assigned to the CVO for TB both this day and I'll show you the
12 day before. Do you remember why that was?

13 A He either worked well with him, or he asked if he could
14 have him. Or sometimes, if they were in -- in NBI for, like, a
15 week, I would try to give them a break for a night or two and
16 put them in a CVO or something else to get off that unit for a
17 little bit, because it -- it gets to you.

18 JUDGE SANDRON: Did -- did he spell his name E-A-L? It
19 look -- or -- or is that just --

20 MS. LANOUEETTE: E-A-L.

21 JUDGE SANDRON: E-A-L. Okay. That's what I thought it
22 showed.

23 Q BY MS. LANOUEETTE: I want to ask you about that. Did
24 you -- as the person doing these assignments, did you worry
25 about burnout of the employees when they were assigned to more

1 difficult assignments like NBI?

2 A Yes. Yes. I -- from me being in -- in NBI -- I was in
3 NBI for the first three years, every shift that I worked
4 overtime and regular, and you do need a break after a while.
5 It -- it gets to you.

6 Q So even if somebody said, I don't mind, I'll take NBI
7 again, you might decide they better take a break so they don't
8 quit, burn out?

9 A I usually did it after they asked or if I could tell
10 that -- from watching them that they had had -- had enough, at
11 least for a little bit.

12 Q What would you look for in deciding they'd had enough?

13 A Their attitude, if they were -- were starting to be short-
14 tempered, how they were talking to the neighbors, if they
15 weren't as active with them, if -- things like that. If -- if
16 they were acting any different than how they did most of the
17 time, I took that as give them a break and let them relax and
18 then bring them back.

19 Q I have a question. On this sheet, you're assigned to, it
20 looks like, TS?

21 A Therapeutic support.

22 Q And what did that mean?

23 A That means I could help with breaks; I could help in NBI.
24 I could help anywhere they needed throughout the building.

25 Q In other words, it meant, too, that you had enough staff

1 for the night?

2 A Yes. Yes.

3 JUDGE SANDRON: And -- and just to clarify, these were
4 assignments for the whole entire building, the whole operation
5 at night?

6 THE WITNESS: Yes.

7 MS. PENDER: I'm sorry. Did you say the whole -- the
8 whole building at night, or the CSS unit at night? I didn't
9 hear.

10 THE WITNESS: It was done for everybody that was in the
11 building for CSS that night.

12 JUDGE SANDRON: Oh, for -- for CSS only?

13 THE WITNESS: Yeah. Yeah. Yes.

14 Q BY MS. LANOUE: Maybe we should clarify. Maybe it's
15 not --

16 A Yes.

17 Q C -- CSS workers, where do they work physically in the
18 building?

19 A They're everywhere in the building. They're at the front
20 desk; they're in NBI. They're in certain people's rooms on
21 each unit that are on CVO. And they're walking around giving
22 breaks, if we have the staff for it.

23 JUDGE SANDRON: So -- so this is for the CSS employees
24 throughout the building on that shift?

25 THE WITNESS: Yes. Yes.

1 JUDGE SANDRON: I mean, that's clarified.

2 MS. LANOUEETTE: Okay.

3 Q BY MS. LANOUEETTE: Page 6, this is one where Josie did not
4 work that night?

5 A Yeah. Yes.

6 JUDGE SANDRON: Remem -- yes.

7 Q BY MS. LANOUEETTE: Why did you assign Anita to the front
8 desk?

9 A She liked being at the front desk. That was one of the
10 places where she preferred.

11 Q And this is the January 13th, the -- this is another day
12 that Josie didn't work?

13 A Yes.

14 Q All right. I noticed that Patrick had -- was assigned to
15 RD both days. Is --

16 A Yes.

17 Q -- that -- do you remember why that was?

18 A Again, it's either where they asked to be, or if it's
19 somebody that they're good with, or if the other CVOs --
20 because on this night, there was two people that stayed from 3
21 to 11. If it's a CVO that gives more of a hard time than the
22 others, and the others just worked 3 to 11, I would give the
23 guy that just came to work the more difficult CVO than the ones
24 that have been working all day.

25 Q How do you know somebody -- just so the record's clear.

1 How do you know that one of these people had just come off
2 working the 3 to 11?

3 A Because they're from the 3 to 11 shift, and nobody came on
4 their day off to work an overnight.

5 Q If you were working the 3 to 11 and you saw that you were
6 short, would you ask people to stay?

7 A I would ask, yes. I would ask, Josie would ask, the 3 to
8 11 would ask. It -- every -- everybody did, yes.

9 JUDGE SANDRON: When -- when you say everybody -- when you
10 say everybody, who does that encompass?

11 THE WITNESS: All of the CSS supervisors. They would ask
12 everybody that they see and if they would will -- if they were
13 willing to work certain days.

14 JUDGE SANDRON: That was -- that was the CSS supervisors
15 on all -- all the shifts?

16 THE WITNESS: Yes. Yes.

17 Q BY MS. LANOUE: Is that -- do the 3 to 11 supervisors
18 ask because they're supposed to sign off that the next shift is
19 covered before they leave?

20 A Sometimes they did, yes. Sometimes they -- they didn't.

21 Q The goal is to have that, but it doesn't always happen?

22 A Yes. Yes. It was like that for every -- every shift.

23 Q I just -- I'm sorry, it moves so slowly. I -- I want to
24 show you page 11. This -- and -- and it appears that you had
25 originally assigned Patrick to the individual supervisions and

1 then crossed his name off and put yourself in. Do you
2 remember --

3 A Yes.

4 Q -- how that happened?

5 A I -- he -- if he wasn't placed anywhere else on the
6 schedule, he left early.

7 Q Okay.

8 A Either wasn't feeling good or --

9 Q Or --

10 A -- something happened or something. Yes.

11 Q Did -- did CSS employees sometimes call out, even after
12 their shift started?

13 A Yes. Yes.

14 Q Okay.

15 JUDGE SANDRON: If -- if an employee during the shift
16 needed to leave for, you -- you know, an emergency or may be
17 sick, who -- who did they go to to be excused early?

18 THE WITNESS: They would come and talk to me or Josie, and
19 if we had enough people to cover him with a CSS worker, we
20 would let them go and replace them with another worker. If we
21 didn't, then we would ask the nursing supervisor if she had any
22 CNAs or nurses that we could use until the end of the shift.
23 Or if we didn't have anything, then sometimes they weren't able
24 to leave, or we would let them go and figured something else
25 out.

1 Q BY MS. LANOUEETTE: I'm going to show you now what's been
2 marked as Exhibit 45, and this is page (audio interference).

3 JUDGE SANDRON: Did you wish to offer --

4 MS. LANOUEETTE: I think, Your Honor, that I haven't laid
5 enough --

6 JUDGE SANDRON: Want to wait?

7 MS. LANOUEETTE: -- foundation to offer it, and so I'm
8 going to wait --

9 JUDGE SANDRON: All right. That's fine.

10 MS. LANOUEETTE: -- until I have a -- a witness explain
11 sort of the -- how it's used in the business.

12 JUDGE SANDRON: All right. That's fine.

13 MS. PENDER: Ms. Lanouette, can you just identify what
14 document this is again? I didn't hear.

15 MS. LANOUEETTE: Yes.

16 JUDGE SANDRON: It's a new one.

17 MS. LANOUEETTE: This is Exhibit R-45, page 6.

18 Q BY MS. LANOUEETTE: And Mr. Endy, could -- could you tell
19 us if you recognize this document?

20 A Yes, I do.

21 Q And what is it?

22 A It's the shift-to-shift.

23 Q Okay. Who fills out the -- the shift-to-shift form?

24 A Whatever supervisor is there.

25 Q Okay. And so again, I want to go through it before we

1 talk about what's on it. The shift 11 to 7 is your -- is the
2 shift -- the overnight shift; is that right?

3 A Yes.

4 Q And this date happens to be January 21st, 2019?

5 A Yes.

6 Q That's your name as supervisor?

7 A Yes.

8 Q And did you fill this particular one out?

9 A Yes.

10 Q Okay. So we've talked about codes, the -- the codes
11 rainbow and moon. If there is one of those, do you make a note
12 in here about it?

13 A Yes. We have to write the date, the time, where it was,
14 who it was involved with it.

15 Q Okay. And change of status, what does that mean?

16 A If somebody was taken off of IS or CVO, or if somebody was
17 put -- put on IS or CVO.

18 Q Okay. What does smoking mean?

19 A If we're doing IS and -- or if just a random neighbor
20 was -- if -- if a worker smelled smoke in the room, and they
21 went and looked and they were caught smoking, we have to write
22 the neighbor's name in there.

23 Q And here it says "callouts", and you've listed Patrick
24 12:15. What is that?

25 A Yes. That means he called the facility at 12:15 and

1 called out when he was supposed to be in at 11.

2 Q Lateness. If somebody's late, you write them in there?

3 A Yes.

4 Q And then if you have to do any discipline, you write it in
5 there?

6 A Yes.

7 Q Okay. And comments, that's what?

8 A If I have anything to say about the shift or if I saw a
9 neighbor doing something that looked suspicious at all, I would
10 put that there.

11 JUDGE SANDRON: Do you -- do you recall if you -- if you
12 ever wrote in anything under that disciplinary action box?

13 THE WITNESS: I have filled out, I'd say, anywhere from
14 three to five write-ups.

15 JUDGE SANDRON: During the entire time that you were
16 there?

17 THE WITNESS: Yes. Yes.

18 Q BY MS. LANOUEETTE: Since the judge has raised that
19 issue --

20 JUDGE SANDRON: I don't want to interrupt your flow. It
21 is all --

22 MS. LANOUEETTE: No, that -- that's all right. I just have
23 to find it. Well, maybe I won't find it.

24 Q BY MS. LANOUEETTE: If you had somebody stay late -- or
25 stay over from last shift to cover this -- the -- the

1 overnight, did -- did you have to get permission from anybody
2 to do that?

3 A Marcos, when he would go on vacation or if he was out
4 of -- going to be out of the building for a certain amount of
5 time, he would tell us to fill one of them out and to approve
6 it and sign it. If he was going to be in the next day or after
7 the weekend was over, he would tell us to just fill one -- one
8 of them out and put it in the folder with the rest of the shift
9 papers.

10 Q So when you say fill one of them out, you mean the -- the
11 approval for overtime?

12 A Yes. We would write the -- the worker's name and then
13 the -- the shift or hours they'd be working to help. And then
14 we're putting it in the -- in the -- in the folder. And Marcos
15 would get it, and he would sign it.

16 Q Okay. So let me show you what's been marked as Exhibit R-
17 55. And ask if this is the sheet you're referring to?

18 A Yes.

19 Q Okay. All right. So the employee -- where you fill out
20 the top with the employee's name, it looks like, and the date
21 they're going to work, and the shift; is that right?

22 A Yes.

23 Q And then they -- the employee signs it. And then in this
24 case, Marcos must have been out of town, you checked the
25 approved box?

1 A Yes.

2 Q And signed it.

3 A Yes.

4 Q Was there ever a time that you had somebody stay and
5 filled it out that Marcos did not approve it?

6 A Not that I remember, no.

7 Q I want to show you a few more pages of Exhibit 45 now,
8 just so that we are clear on what the codes on those pages
9 mean. So this is again -- oh, I'm sorry. I have to screen
10 share. So this is Exhibit 45, page -- make sure I got the
11 right page. No, that's the wrong page. It's -- I got the
12 correct three. Let's try this again.

13 This is Exhibit 45, pages 3 and 4 -- I'm sorry, R-45,
14 pages 3 and 4. And Mr. Endy, did you fill out page 3?

15 A Yes.

16 MS. LANOUEETTE: Is that a fire drill?

17 UNIDENTIFIED SPEAKER: Yes.

18 MS. LANOUEETTE: Can we ignore it, or no?

19 UNIDENTIFIED SPEAKER: Yes.

20 MS. LANOUEETTE: Okay. A fire drill just went off here. I
21 had to make sure we could keep going.

22 JUDGE SANDRON: Yeah, make sure that we're -- everybody is
23 safe.

24 Q BY MS. LANOUEETTE: There's a callout there, Brionna.

25 A Yes.

1 Q Brionna, medical. Was that because she had called out
2 that night for some -- for a medical reason?

3 A Yes.

4 Q And then an additional note, it looks like you wrote
5 Alicia (phonetic) stayed?

6 A Yes.

7 Q Was that to communicate that that's how you'd covered the
8 shift?

9 A Yes. I filled Brionna's spot with Alicia.

10 Q And page 4, is this a shift-to-shift that you filled out?

11 A Yes.

12 Q And this one, there was some kind of code rainbow that
13 night; is that right?

14 A Yes. Yes.

15 Q It looks like you also had another callout?

16 A Yes.

17 Q And some lateness?

18 A Yes.

19 Q What did you do when an employee was chronically late?

20 A Marcos told us if they're late after -- for a certain
21 amount of times, to write them up and put them in the folder,
22 or to write their names down on a piece of paper, put it in the
23 folder, and he will deal with it.

24 Q Did you ever meet with Marcos to deliver discipline to an
25 employee?

1 A I did once, yes.

2 Q And in that case, did Marcos back the decision you'd made?

3 A I just wrote that he was caught sleeping by the -- the
4 nurse, and when Marcos dealt with it, he -- I -- I didn't write
5 down what I recommended. I'm not -- I just have to write down
6 what he was doing.

7 Q Okay.

8 JUDGE SANDRON: Do you remember when that was,
9 approximately, that one incident?

10 THE WITNESS: I do not, no.

11 JUDGE SANDRON: Would -- would you say it was within the
12 last year that you were employed, or before that? If -- if you
13 remember.

14 THE WITNESS: Probably before the last year.

15 JUDGE SANDRON: Mr. Baker, this -- the fire drill's not
16 interfering, I -- I assume, with your ability to record --

17 MR. BAKER: No, Judge, but no -- no, the
18 fire alarm is fine, but when you start to talk, you're --
19 you're -- you're real quiet again. Could you put your mic
20 maybe a little closer to your mouth?

21 JUDGE SANDRON: Okay, let me move it over.

22 MR. BAKER: Oh, that's -- that's wonderful. No, that
23 was --

24 JUDGE SANDRON: The wire --

25 MR. BAKER: -- that was great, Judge.

1 JUDGE SANDRON: Okay. I'll try to leave it there.

2 MR. BAKER: Yeah, that's great. Perfect. Yeah, that
3 sounds great.

4 JUDGE SANDRON: Okay, thank you.

5 Q BY MS. LANOUE: Mr. Endy, I'm showing you what's been
6 marked as Exhibit 40 -- R-45, page 8. And ask if this is a
7 shift-to-shift supervisor form you filled out?

8 A Yes.

9 Q Okay. And this one has a change of status.

10 A Yes.

11 Q And there was a name there, which for privacy reasons,
12 we've blocked out. Is -- tell me what you put on this form
13 when there's a change of status to CVO.

14 A We put if the -- what the neighbor's name is and if
15 they're -- they're on or they're off, and then we get a -- a
16 letter -- a -- a small piece of paper from the nursing
17 supervisor that the nursing supervisor signs, the nurse on the
18 shift signs and fills out, and then whatever CSS supervisor
19 receives it has to sign also. And we write -- we staple it to
20 that paper. And it says, again, if they're on or they're off
21 and the reason why they're on or they're off.

22 Q And page 8 also has another callout.

23 A Yes.

24 Q And then, there's several notes -- Leo (phonetic), Alicia,
25 Thelma (phonetic) stayed overnight. Thelma left at 3 a.m.

1 A Yes.

2 Q Were those people that you would ask to stay to cover
3 absences on the shift?

4 A They're absence -- either absences on the shift from
5 callouts, or it could've been a weekend. We were always short
6 on the weekends.

7 Q Okay.

8 JUDGE SANDRON: Okay. In -- in general, how -- how much
9 discretion did -- did people -- you know, the employees have to
10 decline to accept an assignment or a shift? Just to give us an
11 understanding. You -- you made these assignments or -- or --

12 THE WITNESS: Yes.

13 JUDGE SANDRON: -- you had them drawn up. Did
14 employees -- you know, how -- how much flexibility do they have
15 in saying, I -- I don't want an assignment, or I'd prefer not
16 to work?

17 THE WITNESS: It depended on their -- their reason. If,
18 say, there was certain CVOs that slept almost the whole night.
19 But they were still on a CVO, and you had to be in the room
20 with them with the heat on and the light off, and if you come
21 to work tired, then being in a -- in a chair with the light off
22 isn't going to keep you awake. So I -- if they were already
23 tired and they -- I -- I would try to keep them off of that, if
24 that's what the reason was.

25 Or if their legs were tired from the last job or from

1 working a double, I wouldn't give them a CVO -- or not a CVO,
2 I -- I -- I wouldn't give them IS. I would give them something
3 else.

4 JUDGE SANDRON: Okay.

5 Q BY MS. LANOUE: Mr. Endy, I'm showing you what's been
6 marked as Exhibit R-45, page 21, and I'm looking at the
7 callouts and lateness.

8 A Yes.

9 Q This -- this is one where, it looks like, Sandra
10 (phonetic) called out?

11 A Yes.

12 Q And then Courtney (phonetic) and Josie were both late?

13 A Yes.

14 Q And you wrote that on the shift-to-shift form?

15 A Yes.

16 Q Let's see. You mentioned that there was other paperwork
17 that CSS supervisors had to fill out after their shift.

18 A Yes.

19 Q And I want (audio interference) you what's been marked as
20 Respondent's Exhibit 58, page 1 -- well -- page 1. And ask if
21 you recognize this document. And I will scroll --

22 A Yes.

23 Q -- but -- okay. I just want to scroll through it before
24 you say yes because this is one I can't put on the screen.

25 A Yes.

1 Q What is this document?

2 A That is the -- the shift -- the daily shift report paper.
3 It asks the same exact questions as the last one did.

4 Q What is your understanding of how this document is used?

5 A I don't understand your question.

6 Q At -- at the -- at Northeast Center, what happened to this
7 document after you filled it out?

8 A That I -- I don't know. We would put it in the folder
9 with all the rest of the -- the daily schedules and
10 assignments. And after Marcos got it, we have no idea what
11 would happen to it. That was none of our business or concern.

12 Q Okay. So this one indicates that there were no new
13 orders. If there had been new orders for close observation,
14 was this a place you would've described those?

15 A Yes.

16 Q And this one indicates that the break schedule was not
17 maintained and --

18 A Yes.

19 Q Do you then -- what mark -- what -- you haven't written a
20 reason there. Is that because it was obvious that it was not
21 maintained because it was short-staffed?

22 A Yes.

23 Q Okay. If there was some odd reason the schedule wasn't
24 maintained, because of codes or something, would you have put
25 an explanation in there?

1 A I would've, yes.

2 Q And then you've got the code rainbows, none called; code
3 moons, none called. And you've checked the IS/CVO
4 documentation.

5 A Yes.

6 Q And in this case, you've checked completed at the end of
7 the shift?

8 A Yeah. All the paperwork was completed at the end of
9 the -- by the end of the shift, yes.

10 Q Okay. And as a CSS supervisor, do you have to review that
11 documentation to make sure it's completed?

12 A For a while, Marcos wanted us to walk around every hour
13 and to check up on all the workers and initial over every hour
14 on the log sheet, saying that we saw that it was completed
15 every hour when it was supposed to and that they were doing
16 what they were supposed to be doing.

17 Q Okay.

18 JUDGE SANDRON: What --

19 Q BY MS. LANOUE: And that would be -- if you did that,
20 would you have checked the supervision and CVO documentation
21 reviewed throughout shift?

22 A Not that I was aware of. There was -- that it was
23 completed or not completed.

24 Q Okay.

25 JUDGE SANDRON: Well, when -- when did -- you said he, at

1 one point, wanted you to do it hour-by-hour. What period --
2 for what period was that?

3 THE WITNESS: It lasted for about a month or two, and then
4 most of the time, we were short -- we were so short-staffed, we
5 didn't have enough staff to -- to walk around and check on
6 everybody.

7 JUDGE SANDRON: And -- and -- and was that before your
8 last year of employment, if you recall?

9 THE WITNESS: It was before, yes.

10 Q BY MS. LANOUE: What are behavior logs?

11 A A behavior log is where we write down -- say, a neighbor
12 got into a fight or an altercation with another neighbor and a
13 worker had to step in to help or to break it up, we have to
14 write down what happened, the date, the time, who witnessed.
15 And that -- that paper was reserved for everybody.

16 Q Okay. And then when you're marking this sheet, you are
17 just checking that they -- if there were any, they were
18 completed toward the end of the shift?

19 A Yes.

20 Q Did you ever have a circumstance where employees had not
21 yet completed their CVO documentation or their IS
22 documentation?

23 A Not that I recall, no.

24 Q And then section 6 is -- is -- I think you told us about
25 behaviors before. This is where they would be listed?

- 1 A Yes.
- 2 Q And section 7 is looking at staffing for the next shift?
- 3 A Yes.
- 4 Q And -- and it's either things are covered, or you've
- 5 altered the proper person they're not?
- 6 A Yes.
- 7 Q Okay. Is that your signature at the bottom?
- 8 A Yes.
- 9 Q This is page 2. I want - is this page? No. Page 3.
- 10 MS. LANOUE: Sorry. I don't mean to give everyone a
- 11 headache.
- 12 JUDGE SANDRON: That's all right. It takes a while to
- 13 scroll.
- 14 MS. LANOUE: Yeah.
- 15 MS. LANOUE: Page 5.
- 16 Q BY MS. LANOUE: I want to show you what's been marked
- 17 as page 5. Is this one you filled out?
- 18 A Yes.
- 19 Q And for this one, under the IS/CVO documentation, you
- 20 checked both that the documents were reviewed and that they
- 21 were properly completed?
- 22 A Yes.
- 23 Q What -- does that mean that you had checked every hour
- 24 throughout the shift for documents?
- 25 A Yes.

1 Q Okay. Did you have to complete these logs every night
2 that you were a supervisor?

3 A Yes. Yes.

4 Q Does Northeast Center have a --

5 JUDGE SANDRON: Oh, can I just ask one question? When you
6 filled out these logs -- I forgot her last name -- Josie was
7 not there on those nights?

8 THE WITNESS: Either she was not there or she came late,
9 so I -- I started filling the paperwork out. So if I -- I
10 started it, they told me I should finish it. Or she left
11 early, or she called out, or she was off that night.

12 JUDGE SANDRON: Okay. Thank you.

13 THE WITNESS: You're welcome.

14 Q BY MS. LANOUE: Did the facility have a rouse - a
15 rule -- a -- a rule about cell phone use for employees?

16 A You're not supposed to have it out unless you're in a
17 break room.

18 Q Was that a rule that the CSS night supervisors sometimes
19 ignored because of the nature of the job?

20 A That was something that was ignored by 99 percent of
21 employees, depending on what they were doing and who they were
22 around.

23 Q So it depended on the circumstances of what was happening?

24 A Yeah. Yeah.

25 Q Did you ever --

1 JUDGE SANDRON: Yes.

2 Q BY MS. LANOUEETTE: Did -- maybe you'll help the judge to
3 understand. When you're doing a CVO at night --

4 A Yes.

5 Q -- what are you literally doing?

6 A Lit -- like, what are we literally supposed to be doing,
7 or what are you doing?

8 Q What -- what are you supposed to be doing?

9 A You're -- depending on the CVO, you're either just in the
10 room in general, or there was some you have to be an arm's
11 length away from them, sitting in a chair. And you're supposed
12 to be watching them and documenting what they're doing. Some
13 slept the whole shift. So on the overnight, they gave
14 permission to -- depending on what CVO you were using, to watch
15 your phone to, like, watch videos and mute -- and movies to
16 stay awake. And then there was some that were walking around
17 all night, so you had to walk around all night with them.
18 There was some that just talked to you the whole entire shift,
19 so you were sitting with them talking to them. So the -- each
20 CVO was different on what you were supposed to do with them,
21 other than document what they're doing.

22 Q And so if you were supposed to be talking to them, it may
23 have been inappropriate to have your cell phone out, but if you
24 were sitting in -- in the dark in a room watching someone
25 sleep --

1 A Yes.

2 Q (Indiscernible, simultaneous speech) video?

3 A Yeah. Yes.

4 Q And as a CSS supervisor, if you saw somebody who was supposed
5 to be walking somebody around, standing there on their cell
6 phone, would you do anything?

7 A I would tell them to be closer to the neighbor and to pay
8 attention to the neighbor.

9 Q You wouldn't just let them keep ignoring their job?

10 A No.

11 JUDGE SANDRON: Just so we -- we understand, who -- who
12 decided when there was to be a CVO? I mean, who made the
13 decision that's -- that a resident needed a CVO?

14 THE WITNESS: That's the -- the nurses, the nursing
15 supervisors, the doctors.

16 JUDGE SANDRON: I see. So -- so that -- those are
17 medical decisions?

18 THE WITNESS: Yes. Yes, or behavioral decisions.

19 JUDGE SANDRON: Okay.

20 THE WITNESS: Depending on what they were doing.

21 JUDGE SANDRON: I see.

22 MS. LANOUE: Your Honor, may I have one moment to talk
23 to my client?

24 JUDGE SANDRON: Yes. Do you want to go off for, like --

25 MS. LANOUE: For a second.

1 JUDGE SANDRON: All right. We'll just go -- okay. We'll
2 go off the record just for a moment.

3 (Off the record at 11:41 a.m.)

4 JUDGE SANDRON: Okay. Ms. Lanouette, are you ready?

5 MS. LANOUEETTE: Yes.

6 JUDGE SANDRON: Okay.

7 **RESUMED CROSS-EXAMINATION**

8 Q BY MS. LANOUEETTE: Mr. Endy, would you say the night shift
9 for CSS is different than the day shift for CSS?

10 A As in -- regards to what?

11 Q Well, is there anyone here -- are there different concerns
12 when you're assigning CVOs and one-on-ones on the night shift
13 than the day shift?

14 A I'm not sure how the day shift scheduled their workers.

15 Q You've been -- you were already a supervisor on the night
16 shift when Josie started this (audio interference); is that
17 right?

18 A No. Josie was supervisor on the night shift when I
19 started working there in 2014.

20 JUDGE SANDRON: And -- and just so we have it. I think we
21 may already have it on the record, but there were three shifts,
22 right?

23 THE WITNESS: Yes.

24 JUDGE SANDRON: And -- and -- you -- the shifts you worked
25 was 11 p.m. to 7 a.m.?

1 THE WITNESS: Yes.

2 JUDGE SANDRON: And -- and -- just so we have it, the
3 other shifts were 7 a.m. to?

4 THE WITNESS: 3 p.m.

5 JUDGE SANDRON: And then 3 p.m. to 11 p.m.?

6 THE WITNESS: Yes.

7 MS. HAMMONDS: Judge, your camera is off.

8 JUDGE SANDRON: Oh. Oh, I don't know how that happened.
9 Let's see. Camera. Oh, I don't know how that -- let's see.
10 Oh, here, here. I should be on now. Okay. There I am. I'm
11 back, visually. Thank you.

12 Q BY MS. LANOUEETTE: Are you sure you weren't on the night
13 shift before Josie came over from the day shift?

14 A Oh, I thought you meant was she supervisor. Yeah, she
15 was -- when -- when I first started, she was working the day
16 shift, but she was supervisor on the day shift.

17 Q Okay.

18 A I thought you meant how long was she supervisor for.

19 Q No. Before she switched from day shift to night shift,
20 you --

21 A Yes.

22 Q -- had been a supervisor on the night shift?

23 A She became supervisor on the night shift before me. It
24 was her, and then another guy. And then he got fired, and then
25 I took his place.

1 Q But you had been working the night shift before she came
2 to nights; is that right?

3 A Yes. Yes.

4 Q Okay. I -- I want to ask you now about the conversation
5 with Keith Peraino, P-E-R-I-A-N-O (sic).

6 JUDGE SANDRON: Thank you.

7 Q BY MS. LANOUEETTE: Did Mr. Peraino ask if you were a
8 supervisor during that conversation?

9 A He asked, I believe so, if I was a supervisor, yes.

10 Q And did you tell him you were?

11 A Yes.

12 Q Okay. Did he ask you if you did discipline for employees?

13 A No, he didn't.

14 Q Did he ask you if you knew you could do discipline for
15 employees?

16 A No, he didn't.

17 Q You said this conversation took place in the
18 administrative conference room. Ha -- have you attended other
19 events in the administrative conference room?

20 A Yes, I have.

21 Q Were birthday parties held in that conference room?

22 A Not that I'm aware of. They could have been, but not -- I
23 worked overnights, so we didn't -- we never used it.

24 Q Didn't use it.

25 A Yeah.

1 Q Okay. All right.

2 MS. LANOUE: That's all the questions I have.

3 JUDGE SANDRON: Did you atte -- attend meetings of
4 supervisors when you were there?

5 THE WITNESS: I have not, no.

6 JUDGE SANDRON: Okay. Redirect?

7 MS. PENDER: Yes, Your Honor.

8 JUDGE SANDRON: Yeah. It's -- it's now 11:45. It might
9 be -- a.m. It might be helpful if we can finish with the
10 witness before we take our -- our break, so we'll be done.

11 MS. PENDER: Okay. I think I have maybe five or ten
12 minutes' worth, not -- not extensive.

13 JUDGE SANDRON: All right. Why don't we try to finish him
14 before we take our break.

15 MS. PENDER: Okay.

16 **REDIRECT EXAMINATION**

17 Q BY MS. PENDER: Mr. Endy, on the nights where you were
18 filling out the assignment sheet, about how long did it take
19 you to fill that out?

20 A If there was no codes or anything, 30 seconds. If there
21 was a code, a minute to a minute-and-a-half.

22 Q Well, I'm talking about just the assignment sheet at the
23 beginning of the --

24 A Oh. The --

25 Q -- shift.

1 A -- the assignments sheets? Thirty seconds.

2 Q And the paperwork at the end of the shift, if you were the
3 one filling it out, how long would that take you to fill out?

4 A If there was codes, a minute to a minute-and-a-half; if
5 not, 30 seconds to a minute.

6 Q And so for the rest of your eight-hour shift, what would
7 you be doing?

8 A Job just like all the -- all the rest of the CSS workers.

9 Q You had testified about asking people to stay to cover the
10 next shift.

11 A Yes.

12 Q If nobody agreed to stay, could you mandate someone to
13 stay?

14 A No.

15 Q Could you discipline someone for refusing to stay?

16 A No.

17 JUDGE SANDRON: Well, if somebody refused to stay, did you
18 report that on -- on the notes; is that what you did?

19 THE WITNESS: No.

20 JUDGE SANDRON: Did you do anything?

21 THE WITNESS: No. If somebody refused to stay to help out
22 with my shift, there's nothing I could do there. Once their
23 shift is over, it's over. It's -- it's up to them if they want
24 to stay or not.

25 JUDGE SANDRON: So it -- it was voluntary, basically?

1 THE WITNESS: Yeah. Yeah. Yes.

2 Q BY MS. PENDER: On the assignment sheet, one example
3 for -- I think page 2 of Respondent 44, it had, "Josie noted
4 that employees had refused breaks".

5 A Yes.

6 Q Who would write on that, that people had refused their
7 break?

8 A Whoever the break person was.

9 Q Okay. So not necessarily the supervisor?

10 A No. No.

11 Q So -- so the supervisor wouldn't be the only person to
12 help fill out the assignment sheet?

13 A Nope. It would be whoever we had that day doing it. It
14 could be nobody, or it could be just a regular worker.

15 JUDGE SANDRON: Wh -- what effect did it have if an
16 emp -- if an employee refused a break? Did it have any --

17 THE WITNESS: (Indiscernible, simultaneous speech).

18 JUDGE SANDRON: -- consequence?

19 THE WITNESS: No. No. They -- as -- as long as
20 they -- th -- th -- they don't need to take their two 15-minute
21 breaks. And if they refuse their lunch break, they have to
22 fill out a paper saying that they refused it. But most of the
23 time, people took their lunch breaks. It was just the 15-
24 minutes breaks that they refused most of the time.

25 JUDGE SANDRON: Well -- well, were they paid -- you know,

1 if they didn't take the break, did -- did they get paid for the
2 break -- that 15-minute time?

3 THE WITNESS: If we didn't have a lunch -- if we didn't
4 have a break person, then they knew that there was nobody to
5 give a break, so they -- they got paid for the whole -- the
6 whole shift. If we had a break person, and they refused the
7 lunch break, then I -- I'm guessing they -- they didn't get
8 paid for it, but I'm not sure.

9 JUDGE SANDRON: Oh, you don't know -- you don't know?

10 THE WITNESS: No.

11 JUDGE SANDRON: That's fine.

12 Q BY MS. PENDER: Mr. Endy, you -- you testified about one
13 instance where you handed a -- a write-up to -- to Marcos
14 DeAbreu, the CSS director. Did --

15 A Yes.

16 Q -- you know what he did with it after you handed it to
17 him?

18 A I seen him throw one in the garbage. And the rest of
19 them, I don't know what he -- what he did with them. He could
20 have threw them out, or he could have filed them, or --

21 JUDGE SANDRON: Do -- do you know -- do you know whether he
22 actually issued the disciplines?

23 THE WITNESS: I do not know.

24 JUDGE SANDRON: Were there evaluations -- written
25 evaluations performed on employees?

1 THE WITNESS: We were supposed to get evaluations, yes.
2 But whether they got done or not, I don't know.

3 JUDGE SANDRON: Did -- did you ever write up an
4 evaluation?

5 THE WITNESS: No.

6 Q BY MS. PENDER: Mr. Endy, in your time as a CSS
7 supervisor, did you ever hire any employee?

8 A No.

9 Q Did you ever participate in the hiring process for an
10 employee?

11 A No.

12 Q Were you ever told you had the authority to hire someone?

13 A No.

14 Q Did you ever recommend that someone be hired?

15 A No.

16 Q Did you have the authority to do that?

17 A No.

18 Q Did you have the authority to transfer an employee, say,
19 from CSS to activities?

20 A No.

21 Q Could you transfer an employee from day shift to night
22 shift?

23 A No.

24 Q Did you ever suspend an employee?

25 A No.

- 1 Q Did you ever discharge any employee?
- 2 A No.
- 3 Q Did you have the authority to suspend or discharge any
- 4 employee?
- 5 A No.
- 6 Q Did you ever recommend that someone be suspended?
- 7 A No.
- 8 Q Did you ever recommend that someone should be discharged?
- 9 A No.
- 10 Q Did you ever lay off any employee?
- 11 A No.
- 12 Q Did you have the authority to do that?
- 13 A No.
- 14 Q Did you ever grant anyone a promotion?
- 15 A No.
- 16 Q Did you ever recommend that someone should be promoted?
- 17 A No.
- 18 Q Did you have the authority to do either of those things?
- 19 A No.
- 20 Q Did you ever give any employee a reward or bonus?
- 21 A No.
- 22 Q Did you have the authority to do that?
- 23 A No.
- 24 Q Did you ever recommend that someone should get a reward or
- 25 bonus?

1 A No.

2 Q Could you have recommended such a thing?

3 A No.

4 Q Did you ever perform any evaluations of other employees?

5 A No.

6 Q Did you ever provide input on an employee evaluation?

7 A No.

8 Q Other than the time that Marcos was out of town and
9 directed you in doing so, did you, on your own initiative, ever
10 authorize employee overtime?

11 A No.

12 Q Did you ever approve an employee's vacation request?

13 A No.

14 Q Did you have the authority to do that?

15 A No.

16 Q Did you -- did you ever grant anyone a wage increase?

17 A No.

18 Q Did you ever recommend that someone should receive a wage
19 increase?

20 A No.

21 Q Did you have the authority to grant or recommend wage
22 increases?

23 A No.

24 MS. PENDER: I have nothing further, Your Honor.

25 JUDGE SANDRON: Ms. Tuminaro or Ms. Joslin, do you have

1 any further questions of the witness?

2 MS. TUMINARO: I just have one question, Your Honor.

3 **RECROSS-EXAMINATION**

4 Q BY MS. TUMINARO: Mr. Endy, you were showed a document
5 that I believe was Exhibit R-55, the extra shift availability
6 form. During the entire time that you worked as a CSS
7 supervisor, about how many times did you fill out that -- that
8 kind of form?

9 A I'd say maybe 10 to 20 in two to two-and-a-half years.

10 Q And I believe you said you filled out that form when
11 Marcos was away on vacation?

12 A When he was away on vacation, or if he was going to be out
13 of the building for any amount of time.

14 Q Thank you. Thank you.

15 MS. TUMINARO: Nothing further.

16 JUDGE SANDRON: Ms. Joslin, any questions?

17 MS. JOSLIN: I have none, Your Honor. Thank you.

18 JUDGE SANDRON: Okay. Any recross, Ms. Lanouette?

19 MS. LANOUEETTE: Yes, I do, Your Honor.

20 **RECROSS-EXAMINATION**

21 Q BY MS. LANOUEETTE: Mr. Endy, I'm going to show you what's
22 been marked as Exhibit R-52. And ask if that is a Northeast
23 Facility disciplinary report?

24 A Yes.

25 Q Okay. And is that your signature on the end (audio

1 interference) report?

2 A Yes.

3 Q All right.

4 MS. LANOUEETTE: Your Honor, we would offer R-52.

5 JUDGE SANDRON: Any objections or voir dire, if there's
6 any?

7 Q BY MS. LANOUEETTE: And then, Mr. Endy, I think you said --

8 JUDGE SANDRON: Oh. Oh, wait did --

9 MS. TUMINARO: I would have to voir dire if the -- if the
10 General Counsel doesn't.

11 JUDGE SANDRON: Yes, go ahead.

12 MS. LANOUEETTE: Let me put it back up.

13 **VOIR DIRE EXAMINATION**

14 Q BY MS. TUMINARO: Mr. Endy, did you fill out this report
15 at anyone's direction?

16 A What do you mean?

17 Q Did -- did someone tell you to fill out this report?

18 A I filled the reports out when -- if Marcos told me to, if
19 they were late for a certain amount of -- if they were late for
20 a certain amount of days, or a certain amount of time late,
21 then I filled them out. Otherwise, I did -- never wrote
22 anybody up.

23 Q If you recall, did you fill this out, this report for
24 Brandon Parker, at Marcos' direction?

25 A Yes.

1 MS. TUMINARO: No objection to the -- to the document
2 coming in.

3 JUDGE SANDRON: Ms. Pender, any objections?

4 MS. PENDER: No objection.

5 JUDGE SANDRON: And Ms. Joslin? Ms. Joslin indicated no.
6 Do you want to say it on the record?

7 MS. JOSLIN: Sorry, Your Honor. No -- no objection.
8 Thank you.

9 JUDGE SANDRON: All right. Respondent's Exhibit 52 is
10 received.

11 **(Respondent Exhibit Number 52 Received into Evidence)**

12 **RESUMED RECROSS-EXAMINATION**

13 Q BY MS. LANOUELETTE: Mr. Endy, I want -- you indicated you
14 did not attend supervisor meetings?

15 A No, I did not. No.

16 Q I'm going to show you what's been marked R-47. And ask if
17 you recognize this email - or I guess --

18 A I don't know.

19 Q -- (Indiscernible, simultaneous speech)?

20 A I've gotten a lot of emails from him, but I don't
21 recognize it, no.

22 Q And does that subject say, "Supervisor's meeting"?

23 A Yes, but I've never attended one.

24 Q Okay. And page 2 of the document, is there a response
25 from you to that email?

1 A Yes. Looks like it, yes.

2 Q Okay.

3 MS. TUMINARO: Can you just go back to the first page,
4 please?

5 MS. LANOUEETTE: Sure.

6 MS. TUMINARO: I'll just note for the record, it doesn't
7 indicate when this -- it -- it -- it appears to be a calendar
8 entry, not an email, but it doesn't appear to show when it was
9 sent.

10 JUDGE SANDRON: That -- that's noted. Let's see the
11 second page again.

12 MS. LANOUEETTE: Does the second page show when the
13 calendar invite was sent?

14 JUDGE SANDRON: Well -- it appears to, on its face. Well,
15 at least the -- at least the response was sent back on January
16 2nd, 2019.

17 Did you remember sending that -- a response by email?
18 Do -- do you remember that?

19 THE WITNESS: No, I don't. We emailed back and forth
20 often. They -- they usually held the meetings during
21 the -- the daytime when -- after work, and then overnight I was
22 sleeping. And I live an hour away from the Northeast Center.

23 Q BY MS. LANOUEETTE: Mr. Endy, you said you don't have the
24 authority to suspend anyone (audio interference) walk them out.
25 Did you have the authority to walk out or suspend an employee

1 if you saw abuse of a patient?

2 A No.

3 Q What would you do if you saw abuse of a patient?

4 A I would have to report it to the nursing supervisor, or to
5 Patrick Weir, or to the -- the -- the Board.

6 Q What would you do with that employee on the night shift if
7 Mr. Weir was not available until the morning?

8 A I -- you broke up, I didn't hear you.

9 Q Sorry. What would you do with that employee on the night
10 shift if Mr. Weir was not available until the morning?

11 A I would have to report it to the nursing supervisor.

12 JUDGE SANDRON: Was there always a nursing supervisor on
13 duty?

14 THE WITNESS: Always, yes.

15 Q BY MS. LANOUE: You indicated you did the approval of
16 overtime about fi -- 10 to 20 times, I assume you asked
17 employees to stay more than 10 to 20 times in your time at
18 work?

19 A Yes. Yes.

20 Q Were you ever told not to do that?

21 A Only during the times where we have enough workers, we
22 were asked not to. If we didn't have enough, then we were
23 asked to find people to stay.

24 MS. LANOUE: That's all I have.

25 JUDGE SANDRON: Any further questions from anyone?

1 MS. PENDER: Just one -- just one question, Your Honor.

2 **FURTHER REDIRECT EXAMINATION**

3 Q BY MS. PENDER: Mr. Endy, when approving those extra shift
4 availability forms, did anyone direct you to approve those?

5 A Marcos.

6 MS. LANOUEETTE: And Your Hon -- Honor, we've gone over
7 that. It's been asked and answered.

8 MS. PENDER: That's my only question. I'm done.

9 JUDGE SANDRON: Any -- any follow-up questions, Ms.
10 Lanouette?

11 MS. LANOUEETTE: No.

12 JUDGE SANDRON: Okay. Well, thank you, Mr. Endy.
13 You're -- you're done then. It's possible the General Counsel
14 might recall you, but she'll let you know if that happens.
15 Otherwise, your testimony is over. So have a great day.

16 THE WITNESS: Thank you.

17 MS. PENDER: Thank you.

18 THE WITNESS: Thank you.

19 JUDGE SANDRON: Okay. It's -- it's now 12:00 -- 03.

20 May -- so I think this might be a convenient time to take our
21 lunch hour -- or maybe not quite an hour, but we'll call it a
22 lunch hour.

23 But Ms. Pender, do you have any further witnesses to
24 present?

25 MS. PENDER: No, Your Honor. At this time, the General

1 Counsel will rest; although, I'll reserve my right to present
2 rebuttal witnesses.

3 JUDGE SANDRON: So maybe we can, again, take about 45
4 minutes before Ms. Lanouette begins her ca -- her case -- or we
5 could come back at 1. I mean, if -- if that would be
6 preferable for Ms. Lanouette. You wa -- should we make it an
7 hour?

8 MS. LANOUEETTE: That's fine with me.

9 JUDGE SANDRON: Or -- all right. I think we could
10 probably do an hour and -- for today. So we'll come back right
11 at 1:00.

12 MS. TUMINARO: Thank you.

13 MS. PENDER: Thank you, Your Honor.

14 JUDGE SANDRON: Okay. Have a -- have a good lunch.

15 MS. JOSLIN: Thank you.

16 JUDGE SANDRON: Off the record.

17 (Off the record at 12:04 p.m.)

18 JUDGE SANDRON: I think, then, we're ready now to begin
19 the Respondent/Employer's case.

20 So Ms. Lanouette, do you have your first witness?

21 MS. LANOUEETTE: I do, Your Honor, and I would like to make
22 my opening statement at this time.

23 JUDGE SANDRON: Yes, go ahead.

24 MS. LANOUEETTE: The Union engaged in an act of
25 cam -- Union campaign at the facility from July until October

1 31st, when it withdrew its petition for election. The reality
2 is that the Union either never had as much support as it
3 claimed, or it lost support along the way.

4 Instead of regrouping, the Union sought out a group of
5 unrelated lawful discipline or counseling of employees, all of
6 which happened after the withdrawal of the petition, to claim
7 those actions were a campaign to stop the Union. They were
8 not.

9 Cathy Todd was terminated after an extensive investigation
10 revealed a pattern of mistreatment of patients, including
11 swearing at a patient because she was too slow eating; taking
12 food away from another patient because the way she ate was,
13 "disgusting"; yelling at patients; and telling one of them to
14 stay in a chair until dinnertime. Denying a patient phone
15 calls with her family while cruelly allowing other patients to
16 make calls in front of her; making fun of a patient to the
17 extent she was found distraught in her room ripping down her
18 artwork, crying; and even loudly stating what she did not like
19 about each patient in front of all the patients and staff on
20 the floor.

21 Aside from the treatment of patients, the investigation
22 revealed Todd was repeatedly violating the medication policy at
23 the facility. She was not terminated for Union activity; she
24 was terminated because she treated vulnerable people in an
25 atrocious way.

1 Josh Endy was a CSS supervisor. As a CSS supervisor, he
2 acknow -- he could dis -- he acknowledged he could discipline
3 employees, and he acknowledged he made their work assignments.
4 When complaints from employees came about Endy pressuring them
5 to sign cards and telling them they could not talk to anyone
6 else about the Union, the facility properly sought to educate
7 him regarding his obligations.

8 Instead of participating in the conversation, he became
9 abusive and violent, swearing at a supervisor, and slamming the
10 door so hard it broke the garbage can, put a hole in the wall,
11 and cracked the ceiling plate. He was terminated for his
12 violent outburst, not his Union activity.

13 After multiple complaints from employees of housekeeping
14 contractors regarding Kelly Leonard, an additional complaint
15 regarding -- from patients, regarding fear because she told
16 them the facility was short-staffed, and they were not going to
17 receive card, the facility also felt compelled to meet with
18 her.

19 Leonard was reminded she could not be soliciting Union
20 cards during work time. When she was reminded she could not
21 tell patients the facility was going to be short-staffed if the
22 Union didn't get in, she became visibly angry and said she
23 would tell patients they were short-staffed because it was
24 their right to know. At that point, she was reminded
25 Department of Health rules prohibit frightening patients about

1 their care; it is a form of mental abuse.

2 Tara Golden was a good nurse, but she could not make the
3 jump from floor nurse to management. Weir provided her
4 assistance and support, he made suggestions; he accepted her
5 being in his office nearly every day with a problem.

6 Carchidi tried to provide her short (phonetic) as well.
7 When Golden sent an email saying her unit was out of control,
8 Weir sent her to a front-line supervisor course, thinking it
9 would help. The corporate office even attempted to give Golden
10 a mentor. But despite these efforts, Golden never made the
11 transition to manager.

12 In addition, Golden directly disregarded the instructions
13 she had been given regarding what she could and could not do
14 during a Union campaign. She repeatedly solicited the position
15 of employees, even though she was told to stop trying to figure
16 out who was for or against the Union. The final straw came
17 when she solicited grievances from employees, even though she
18 was told on more than one occasion that was illegal.

19 After consultation, management decided it had been enough
20 time, and despite efforts, there was no improvement. She put
21 the facility at risk for unfair labor ch -- pra -- charges, and
22 could not transition to a management role. She was terminated
23 for those reasons, not Union activity.

24 Respondent calls Patrick Weir.

25 JUDGE SANDRON: Thank you. Mr. Weir, I will swear you in.

1 So if you raise your right hand.

2 Whereupon,

3 **PATRICK WEIR**

4 having been duly sworn, was called as a witness herein and was
5 examined and testified, telephonically as follows:

6 JUDGE SANDRON: If you could please state and spell your
7 full correct legal name for the record and provide us with an
8 address, either work or residence.

9 THE WITNESS: Patrick, P-A-T-R-I-C-K; Weir, W-E-I-R. My
10 address is 4 Stonegate Drive, Hyde Park, New York 12538.

11 JUDGE SANDRON: Thank you.

12 **DIRECT EXAMINATION**

13 Q BY MS. LANOUEETTE: Mr. Weir, what is your position at
14 Northeast Center for Rehabilitation and Brain Injury?

15 A I'm the administrator.

16 Q And what is the responsibility of -- of the administrator?

17 A I'm responsible for the overall operations of the facility
18 on a day-to-day basis.

19 Q How long have you held the position of administrator at
20 Northeast Center?

21 A February 20th, 2019.

22 Q And before you were the administrator at Northeast Center,
23 how long had you served as -- in positions where you were the
24 administrator of a long-term care facility?

25 A Over 17 years.

1 Q What kind of facility is Northeast Center?

2 A We are considered a nursing home, licensed, but we have a
3 specialty population here where we deal with people with
4 traumatic brain injuries.

5 Q Okay. And Mr. Weir, I'm going to show you what's been
6 marked as Respondent's Exhibit 59, which I have sent to the
7 parties today. And Mr. Weir, do you recognize Exhibit 59?

8 A Yes.

9 Q What is this Exhibit?

10 JUDGE SANDRON: Can we rotate it, is it possible?

11 MS. LANOUEETTE: I'm going to see if I can -- rotate view.

12 JUDGE SANDRON: I think there might be a way to do it.

13 MS. LANOUEETTE: There we go.

14 JUDGE SANDRON: There. Oh, perfect.

15 MS. LANOUEETTE: Okay.

16 Q BY MS. LANOUEETTE: Mr. Weir, what is Exhibit 59?

17 A It's a generic version of a table of organization,
18 organizational charge for the Northeast Center.

19 Q Okay. And does Exhibit 59 reflect all of the departments
20 at Northeast Center?

21 A No.

22 Q Okay. Is Exhibit 59 a business record?

23 A No.

24 JUDGE SANDRON: Well, I think, though, we can -- you know,
25 because it --

1 MS. LANOUEETTE: I -- I was gonna --

2 JUDGE SANDRON: Yeah. If there's no objection to it
3 being -- you know, once we go through it, that it's authentic,
4 we can admit it.

5 MS. LANOUEETTE: Okay.

6 Q BY MS. LANOUEETTE: Will Exhibit 59 aid you in explaining
7 the departments at Northeast Center?

8 A Yes.

9 Q Okay.

10 MS. LANOUEETTE: Your Honor, we would offer Exhibit 59.

11 JUDGE SANDRON: I think that we need to, maybe, get an
12 idea of what it represents. Maybe the witness can just go
13 through it. And once he does that, if there's no objection or
14 voir dire, we can admit it as -- as a -- a relevant
15 organizational chart for purposes of a trial.

16 Q BY MS. LANOUEETTE: Mr. Weir, what is the responsibility of
17 the director of the brain injury program?

18 A He oversees the -- the whole program that we are known
19 for, the brain injury rehabilitation program.

20 JUDGE SANDRON: I'm just gonna put this -- I'm gonna go on
21 mute for just a minute because I have a phone call, but I'm
22 listening.

23 Q BY MS. LANOUEETTE: And the DON, what position is that?

24 A The director of nursing.

25 Q And the -- what is the responsibility of the director of

1 nursing?

2 A She oversees the nursing department -- the entire nursing
3 department and the clinical aspects of the facility.

4 Q What is the director of therapeutic activities responsible
5 for?

6 A Another term for that is the recreations -- or the
7 director of recreation for the facility.

8 Q And what is recreation?

9 A Oh, providing the -- as a therapeutic milieu, they provide
10 activities that enhance the -- the neighbor's -- what we call
11 our residents, the neighbor's program that they've been
12 designed for, for rehabilitation. And also just the general
13 leisure and recreational activities for the facility.

14 Q And what is the director of dietary responsible for?

15 A For all of the food and the meal service in the dietary
16 department.

17 Q Okay. And what is the director of rehabilitation
18 responsible for?

19 A They oversee the actual physical, occupational, and speech
20 therapy, music therapy programs.

21 Q And what is the director of CSS responsible for?

22 A He oversees the CSS, the community's -- oh, some -- I'm
23 forgetting what the CSS stands for.

24 Q Is it community support specialist?

25 A Support services, yes, department.

1 Q Let me take you back to the nursing department.

2 How -- how many units does Northeast Center have?

3 A Eight.

4 Q And what, slowly for us, are those units?

5 A We have our vent unit -- ventilator unit. We have the
6 medically complex unit, known as MCU. Then we have our NBI
7 unit -- neurobehavioral intensive program unit. And then the
8 rest of the building is made up of the different levels, sort
9 of -- of people here for the NRP program, which is the neuro-
10 rehabilitative program.

11 Q Okay. Who oversees each unit?

12 A Unit managers.

13 Q And who does the unit manager report to?

14 A The unit managers report to the ADONs.

15 JUDGE SANDRON: That's the -- that's the assistant
16 director of nursing?

17 THE WITNESS: Yes.

18 JUDGE SANDRON: How many -- how many are there of those?

19 THE WITNESS: There are two assistant directors of
20 nursing.

21 Q BY MS. LANOUE: And how many unit managers?

22 A Eight.

23 Q What is the role of the RN supervisor?

24 A During the day shift, the RN supervisor is somebody who
25 responds to all of the codes -- the code angels, code rainbows.

1 Because every time there's a code in the building, it could
2 possibly mean that there's -- someone needs to be assessed.
3 And some of our unit managers are LPNs, and that assessment is
4 not within their scope of practice. So the -- the supervisor
5 is an RN, so they respond to all codes and do any assessment
6 of -- for injury of any patient that might be involved.

7 They deal with the laboratories, getting any labs that
8 are -- the results coming, getting them delivered to the units,
9 and making sure that the doctors are aware of the lab results.
10 Any -- the pharmacy, when the pharmacy does deliveries, they
11 are the ones who take in the pharmacy, count off the
12 medications, and then have them delivered to the appropriate
13 units. They take call-ins during the daytime, and they are
14 just a general assistant to, like, walking around the building.

15 Q Okay.

16 JUDGE SANDRON: How many -- how many are -- people occupy
17 that position?

18 THE WITNESS: There is one supervisor for the whole
19 general building on each shift -- the days, evenings, and
20 nights. There is an -- what we call an RN supervisor that
21 belongs just to -- to the brain injury program. It's a -- it's
22 a specialty. It's required by the regulations for that one
23 position.

24 Q BY MS. LANOUE: What is the role of the RN supervisor
25 at night -- on the night shift?

1 A They are pretty much responsible for the building. They
2 are the -- they're the -- the highest ranking person in the
3 building, so.

4 Q What hours do unit managers work?

5 A I mean, they're flexible. Some are 7 to 3, 8 to 4, 9 to
6 5; they are flexible in there. But it's a management position,
7 so they are someone who see -- the job has to be done. So they
8 might have to work, you know, nine or ten hours in a day,
9 depending on -- to get everything done.

10 Q How are unit managers paid?

11 A They're salary.

12 Q We've heard testimony regarding the housekeeping
13 department at Northeast. How is the housekeeping department
14 related to Northeast?

15 A They're a contracted company.

16 Q Okay. And so are their employees, employees of Northeast?

17 A No, they're not.

18 Q Okay.

19 JUDGE SANDRON: So all -- all of your employees are on
20 the -- somewhere in -- in this chart? All of your
21 (indiscernible, simultaneous speech) --

22 THE WITNESS: No.

23 JUDGE SANDRON: -- employees or --

24 THE WITNESS: No, that is not the entire table of
25 organization.

1 JUDGE SANDRON: So this represents what? The chart.
2 Which -- which employees or groups?

3 THE WITNESS: It -- the brain injury program
4 has -- there's -- there's some people under that department
5 that -- nursing, recreation, I think CSS -- I got to think.
6 We're missing social work on this chart here. Trying to think
7 if there's -- oh, medical records. There's some smaller
8 departments that are not identified on here.

9 JUDGE SANDRON: Just so we have a context, about how many
10 total employees are there that --

11 THE WITNESS: There are approximately 415 employees.

12 Q BY MS. LANOUILLE: Admissions is also missing from this
13 chart; is that right?

14 A Yes. Yes. Yes. And the business office. I'm sorry.

15 Q What is MDS?

16 A Oh, MDS. Minimum data set.

17 Q And generally, what is that?

18 A If -- they are nurses who are -- they're clinical, but
19 they -- it deals with the financial aspect of everything that
20 goes on in the nursing home. They oversee the assessments that
21 gets admitted to for billing purposes.

22 Q And does Northeast Center also have a psychology
23 department?

24 A Yes, we do.

25 Q And that is also not reflected on this chart?

1 A Correct.

2 Q Human -- does Northeast Center have a human resources
3 department?

4 A Yes, we do.

5 Q And that is also not reflected in this chart?

6 A Correct.

7 MS. LANOUEETTE: Offer Exhibit 59, solely for demonstrative
8 purposes.

9 MS. PENDER: Can I have a -- a voir dire, if that's okay,
10 Your Honor?

11 JUDGE SANDRON: Yes, go ahead.

12 **VOIR DIRE EXAMINATION**

13 Q BY MS. PENDER: Mr. Weir, did you write this? Did you
14 draw this up yourself?

15 A No. I -- I -- in -- was basically telling Ms. Lanouette,
16 as she was writing it up. I was breaking down the departments
17 for her. She wrote that.

18 Q You gave her the information that's -- that's on the
19 chart?

20 A Correct.

21 Q Yeah. Is the RN supervisor also sometimes referred to as
22 the building supervisor at night, do you know?

23 A I've -- I've never heard it use that expression.

24 Q Okay. Under -- okay. I was just curious. Under,
25 "Director dietary", it looks like between, "Director of

1 Dietary" and "Dietary supervisor" there's supposed to be an
2 assistant director of dietary; is that right?

3 A Yes. Yes.

4 Q Okay.

5 MS. PENDER: I'm -- I'm gonna object just because I -- I
6 think it would be more appropriate to have a full chart.

7 JUDGE SANDRON: Any --

8 MS. LANOUE: I don't have one. I -- I can offer this
9 as illustrative of the departments that are at issue in this
10 case, and a few of the other departments that also
11 service -- directly provide care to patients, but --

12 JUDGE SANDRON: Do counsels for the Charging Parties have
13 any voir dire or objections to the document, for --

14 MS. JOSLIN: Your Honor --

15 JUDGE SANDRON: -- for the purpose it's been offered?

16 MS. JOSLIN: Your Honor, I'm having a hard time hearing
17 you, but I do have some questions about this document.

18 JUDGE SANDRON: Go ahead.

19 **VOIR DIRE EXAMINATION**

20 Q BY MS. JOSLIN: Mr. Weir, ca -- what is the role of an RN
21 supervisor by day, if it's different from the role at night?

22 A They kind of do the same thing, but in -- during the
23 daytime, there are, obviously, the assistant director of
24 nursing, director of nursing, myself. There are other levels
25 here that -- to assist in -- in -- with any issues that come

1 up.

2 But at night, they are the top person in the building, so
3 it goes to them. And if they cannot -- can't -- if they can't
4 address an issue, or control an issue, or something, then they
5 would have to contact the director of nursing or myself.

6 Q So does the unit manager report directly to the RN
7 supervisor at night?

8 A No. The unit managers are primarily here during the day.

9 Q Okay. So the LPNs and CNAs report directly to the RN
10 supervisor at night?

11 A Ye -- yes.

12 Q Okay. And during the day, would a -- would a unit manager
13 report to an RN supervisor for any purpose during the day?

14 A No.

15 Q What if there's an issue that -- an LPN or a CNA has an
16 issue that is related to their field of specialty, I mean,
17 would an RN supervisor get involved at that point?

18 A During the day?

19 MS. LANOUE: Objection. LPNs and CNAs don't have
20 fields of specialty.

21 Q BY MS. JOSLIN: Okay. Well, is there any reason that an
22 LPN or a CNA would go directly to the RN supervisor for any
23 issues that arise with a neighbor during the day?

24 A During the regular work day? Not if there's -- not if the
25 unit manager is in the building and not in a meeting.

1 Q So what hap -- okay. So I guess I'm confused about the
2 dotted line from the RN supervisor to the LPNs that reads night
3 times -- or reads "night". So what does the RN supervisor do
4 during the day?

5 A As I said earlier, they respond to the codes -- any codes,
6 because they do the assessments of -- for any kind of -- any
7 injury, possibly, that may have taken pla -- happens because of
8 a fall, or a code rainbow.

9 They are the ones who deal with the pharmacy and when the
10 pharmacy has to deliver medications to the building. And they
11 go through and they have to separate them to the different
12 units, and they deliver them to the units. Some of them have
13 to be locked up, so they ensure that they are secured.

14 Any of the labs coming in that they need to be addressed;
15 they have to be delivered to the unit -- to the -- they're
16 delivering them to the nurses on the units, whether it's the
17 unit manager or the nurses that are actually on the floors
18 there. So those are the kind of things that they do.

19 Q Okay.

20 MS. JOSLIN: Your Honor, I -- I don't know what it means
21 to admit a document for demonstrative or illustrative purposes,
22 so I'm not sure that I can agree to that. I'm not sure what
23 that means in this context.

24 JUDGE SANDRON: It should -- Ms. Tuminaro, do you have any
25 comments or --

1 MS. TUMINARO: I --

2 THE COURT REPORTER: Judge -- Judge, can you lift your mic
3 up?

4 JUDGE SANDRON: Yes. Can you hear me now?

5 THE COURT REPORTER: Yes, Judge.

6 JUDGE SANDRON: You have to get it --

7 MS. TUMINARO: I --

8 JUDGE SANDRON: -- (indiscernible, simultaneous speech).
9 Yes.

10 MS. TUMINARO: I have a similar -- similar predicament, I
11 suppose, as Ms. Joslin. I -- I don't know exactly what it
12 means. It's not a -- but -- but I -- you know, I -- I don't
13 have any objection, per se.

14 JUDGE SANDRON: And -- and just so we know, was
15 this -- the organizational chart that's shown here, was that
16 also the same in 2019? The time frame with which we're dealing
17 with, was it the same?

18 THE WITNESS: Yes.

19 JUDGE SANDRON: It hasn't changed?

20 THE WITNESS: Yes. Yes.

21 JUDGE SANDRON: All right. Well, I'll -- I'll admit the
22 document as Respondent's Exhibit 59 for the purposes that we've
23 discussed.

24 **(Respondent Exhibit Number 59 Received into Evidence)**

25 JUDGE SANDRON: It -- it still gives some tangible view

1 of -- of the structure. So I think it -- it can't hurt, and it
2 is probably helpful.

3 **RESUMED DIRECT EXAMINATION**

4 Q BY MS. LANOUILLE: Mr. Weir, out -- outside of the nursing
5 department, and the -- the units, who -- who is in charge of
6 the nonnursing departments?

7 A The department heads for each department.

8 Q And we've heard some testimony regarding Upstate Services
9 Group. What is Upstate Services Group?

10 A That is the, I guess, the management company that
11 owns -- owns us.

12 Q When did you -- you start at Northeast Center?

13 A February 20th, 2019.

14 Q And as you became familiar with the facility, what
15 concerns did you have relating to the facility?

16 A There was a -- a definite tension in the building as I got
17 to know the people and the players. I definitely identified
18 that there was a large fear of the director of nursing at the
19 time who appeared to kind of rule with an iron fist, a
20 dictatorship, and people were afraid of her. So things did not
21 run smoothly.

22 Q What did you do with your concerns?

23 A I did bring them up to the -- my -- my direct report,
24 and -- Dave Camerota, just to inform him of my impressions of
25 the building.

1 Q And what was the response initially?

2 A They were not surprised by this. But I also told them
3 that I'm -- I'm perfectly comfortable trying to work with the
4 director of nursing at the time to see if we could make
5 changes.

6 Q Okay. When did you first become aware there was Union
7 activity at the facility?

8 A July 5th, 2019.

9 Q And how did you become aware?

10 A One of the unit managers had mentioned to me that she had
11 heard some of the staff on her unit discussing Union in front
12 of the -- at the nurses' station.

13 Q What did you do as a result?

14 JUDGE SANDRON: Well, do you remember who she wa -- her
15 name?

16 THE WITNESS: The unit manager? Yes. Adessa Fairley.

17 JUDGE SANDRON: Can -- can you spell that?

18 THE WITNESS: Adessa Fairley. A-D-E-S-S-A, and Fairley
19 is, F-A-I-R-L-E-Y.

20 JUDGE SANDRON: Thank you.

21 Q BY MS. LANOUE: And what -- what did you do as a result
22 of this information?

23 A I sent an email to my -- again, my supervisor, and
24 the -- Dave Camerota, the corp -- co -- COO of the USG, and
25 informed them that I had heard that -- you know, that this was

1 reported to me that people had been discussing a union. And I
2 had also informed him that I had -- in -- when I was going
3 through things here in my desk, I had noticed that there had
4 been some papers that talked about the dos and don'ts of -- of
5 what you can do for managers and supervisors, and just
6 suggested, should I get that out and give it to the -- go over
7 it with the managers again.

8 Q And what was the response you received?

9 A They wanted me to hold off on that because they were
10 discussing what -- what the -- what the plan was, what it was
11 going to be for this idea -- this information.

12 Q What was the result of those discussions?

13 A As a result, we ended up -- they brought in some corporate
14 consultants -- operating consultants, to help do education with
15 the managers, and to assist in evaluating the management team.

16 Q And --

17 JUDGE SANDRON: Were the -- were these contracted, or
18 were -- or were they employees of the corporate level?

19 THE WITNESS: I don't know.

20 JUDGE SANDRON: If you know.

21 THE WITNESS: I don't know.

22 JUDGE SANDRON: All right.

23 Q BY MS. LANOUE: Did education management occur?

24 A Yes, it did.

25 Q And when did that occur?

1 A I think they started coming to the building at the end of
2 July of 2019. So it started either the end of July or
3 beginning of August 2019.

4 Q And who participated in those trainings at the facility?

5 A The department heads and unit managers.

6 Q Okay. And what were the topics that were covered in those
7 training?

8 A They did training for us on, like, the dos and don'ts of
9 what we could do as management -- talking and trying to get
10 information, you know -- regarding getting information out to
11 people. They did a harassment -- workplace harassment
12 presentation. And they also went over the basic guide for the
13 National Labor Relations Act.

14 Q Who did that training?

15 A Keith Perrera (phonetic). I think that's how his name
16 (indiscernible, simultaneous speech).

17 Q Keith Peraino?

18 A Peraino, yes.

19 Q Okay. At that time, were there any meetings held with
20 nonmanagers?

21 A At the very beginning of this, no.

22 Q Okay. Did there come a time the Union filed a petition
23 for election?

24 A Yes.

25 Q When was that?

1 A I -- October 15th, approximately.

2 Q Of 2019?

3 A 2019, yes.

4 Q Okay. And after the petition was filed, were there
5 additional meetings held for management at the facility?

6 A Yes.

7 Q Okay.

8 A Yeah.

9 Q How often were meetings held for unit managers and
10 department heads?

11 A We -- from the beginning, we were pretty much having
12 meetings every day -- most days, not every day, but most days.
13 We would have them in the morning, and then again in the
14 afternoon.

15 Q Okay. What was the purpose -- I should say, nobody
16 objected, but who attended these meetings?

17 A The department heads and the unit managers.

18 Q Okay. And what was the purpose of the morning meeting?

19 A We would have a new education -- like, a handout or a
20 flier, that we would have about -- just information, to go out
21 and to give to the employees so that they would be getting some
22 education. And if they had any questions, there was, like, a
23 new thing almost -- most days, there was a new flier to hand
24 out to people.

25 Q And what was discussed at the afternoon meeting?

1 A Just -- it was, how did it go when you handed it out?
2 What was the reaction? Did people have any questions about it?
3 Did anyone say anything?

4 Q Okay.

5 JUDGE SANDRON: And -- and were these -- were -- were
6 these meetings with all the unit manager -- all the -- all the
7 supervisors, say, so to -- and managers together in the morning
8 and the afternoon, or --

9 THE WITNESS: The -- yes. The department heads and the
10 unit managers were always brought in. We would -- we would
11 hold them in the administrative conference room.

12 Q BY MS. LANOUE: At those meetings, what was said about
13 asking employees about what they wanted with a union?

14 A It was pretty clearly stated that we could not ask
15 questions of the employees regarding the Union.

16 MS. PENDER: Your Honor, I'm going to object that this is
17 hearsay.

18 JUDGE SANDRON: Well, he -- well, he was at those
19 meetings, right?

20 THE WITNESS: Yes.

21 Q BY MS. LANOUE: Mr. Weir, were you at these meetings?

22 A Yes.

23 Q Okay.

24 MS. JOSLIN: Can we just have some clarification on who
25 said what? He said it was clearly said --

1 JUDGE SANDRON: Right. Right.

2 MS. JOSLIN: -- at the meeting.

3 MS. LANOUEETTE: Oh.

4 THE WITNESS: Oh.

5 MS. JOSLIN: But I don't know who said what. We haven't
6 identified a speaker here.

7 JUDGE SANDRON: Well -- well, who --

8 Q BY MS. LANOUEETTE: Mr. Weir, who --

9 JUDGE SANDRON: Well, who ran these --

10 Q BY MS. LANOUEETTE: -- who --

11 JUDGE SANDRON: -- meet -- who conducted these meetings,
12 or who -- who ran the meetings?

13 THE WITNESS: Well, I called the meetings. I called --

14 JUDGE SANDRON: Right.

15 THE WITNESS: -- all the department heads and managers to
16 the meetings, and usually the consultants would be there with
17 the education pieces (indiscernible, simultaneous speech).

18 JUDGE SANDRON: And -- and was there -- was there any
19 particular one of them that spoke most of the time or more of
20 the time?

21 THE WITNESS: More of the time would have been Keith
22 Peraino.

23 JUDGE SANDRON: Okay.

24 MS. JOSLIN: Your Honor, I'd like to second the objection
25 to hearsay testimony. If Keith Peraino's going to testify, we

1 should probably leave it to him.

2 MS. LANOUE: Your Honor, it's -- it's relevant for the
3 purpose of what he understood from those meetings.

4 JUDGE SANDRON: Ms. Pender, any position?

5 MS. PENDER: I maintain my objection, Your Honor. But
6 if -- if Mr. Peraino's going to testify, he's the best one to
7 tell us what he said.

8 MS. JOSLIN: And Your Honor, if I may. She asked him what
9 was said, not what Mr. Weir's understanding was after attending
10 the meetings. I think the purpose is -- is definitely for the
11 truth of the statement as opposed to the effect on the hearer.

12 JUDGE SANDRON: All right. Well -- well, as counsels'
13 aware, hear -- hearsay is not automatically excluded in these
14 proceedings. It's generally admitted and then given
15 appropriate weight. So I'll allow it.

16 Q BY MS. LANOUE: Now, Mr. Weir, we've heard testimony
17 about an October 28th meeting with Dave Camerota. Were you
18 present at that meeting?

19 A I was present at meetings with Dave Camerota. I don't
20 know the specific dates.

21 Q Did you ever hear Dave Camerota threaten to fire all of
22 the CSS workers at the facility?

23 A No.

24 Q Okay. Did there come a time when there were meetings held
25 with employees at the facility who were not unit managers or

1 department heads?

2 A Yes.

3 Q Were those meetings mandatory?

4 A No.

5 Q How were those meetings advertised to employees?

6 A In the mornings, at these morning meetings with Dave, they
7 had been -- if there was a meeting set up for the -- that
8 employees could go to, we told the managers to make sure
9 that -- just to let people know that they were available to go
10 and get the education, and to make sure that they would free
11 them up to go to those meetings if they want -- desired to go.

12 Q Were any specific employees directed to go to the meeting?

13 A No.

14 Q When were these meetings held, to the best of your
15 recollection?

16 A Throughout -- I mean, are you talking about, like, the
17 month, or the weeks? I --

18 Q In terms of dates, when were these meetings held, to the
19 best of your recollection?

20 A I believe they started in September.

21 Q For employees? Did they start before the petition was
22 filed?

23 A They might have started before that, but -- because at the
24 beginning there was -- there was just a lot of education going
25 on for everybody. And then -- trying to remember if they

1 started the meetings. They did -- they started the meetings
2 for employees, it might have been the end of August or so,
3 but --

4 Q Do you remember, Mr. Weir, if the meetings for employees
5 started before or after the petition was filed?

6 A Oh, before.

7 Q Okay. Did the facts of the day start before or after the
8 petition was filed?

9 A I'm sorry, repeat that?

10 Q Did -- did the education of the day start before or after
11 the petition was filed?

12 A Oh, before.

13 Q Was there an election on the Union's petition?

14 A No.

15 Q What happened?

16 A The Union, they withdrew their -- I don't know what
17 you -- petition.

18 Q When did they withdraw their petition?

19 A The end of October. October 31st, possibly.

20 Q What year?

21 JUDGE SANDRON: Well, I -- well, I think we -- we have
22 this in documents, right? So I -- I don't think he needs to
23 give the date.

24 MS. LANOUE: Okay.

25 Q BY MS. LANOUE: Now, you stated that the other

1 purch -- purpose of the management consultants was to evaluate
2 management -- or operation consultants. Did that occur?

3 A Yes, it did.

4 Q And how did they evaluate management?

5 A They -- they would -- when they were here, they were
6 observing -- physically observing. They would walk around the
7 building, they would talk to employees and see what the -- you
8 know, what issues and concerns they had, and -- and then they
9 would come back to these meetings. And they had meetings with
10 the different department heads.

11 Q And what was the result of their evaluation?

12 A There -- it resulted that we had -- that there was some
13 definite problems in leadership, and that there was a lot of
14 distrust of the director of nursing; ineffectiveness on the
15 part of the director of human resources.

16 Q What changes were made as a result of both your
17 observations and the operation consultant recommendation?

18 A We did terminate a few people in key positions, such as
19 the director of human resources, the director of nursing.

20 Q Okay. After the director of nursing was terminated, what
21 further information did you get regarding her performance?

22 A Oh, we identified many complaints that had been submitted
23 to her on behalf of staff that had never been addressed. We
24 found disciplines for staffs that had never been filed with the
25 human resource department. We identified incident and accident

1 reports for the residents, the neighbors, that had never been
2 completed.

3 Q Who became acting director of nursing after the prior
4 director was filed -- terminated?

5 A Carolyn Carchidi.

6 Q Okay.

7 A She was one of the assistant directors of nursing at the
8 time.

9 MS. LANOUE: I believe it's in the record, but Carchidi
10 is C-A-R-C-H-I-D-I.

11 JUDGE SANDRON: Thank you.

12 Q BY MS. LANOUE: Did the consultants have any other
13 recommendations regarding what management should be doing?

14 A Yes.

15 Q And what were those?

16 A That we needed to be more visible to the -- the rest of
17 the building. That people didn't know who the management team
18 was at that time. And so -- to develop a relationship and
19 rapport with the -- the employees.

20 Q So what did you do?

21 A We -- I implemented a program where the departments heads
22 were -- would come at different shifts and different times to
23 walk through the building to get to know the employees, and to
24 offer any assistance that they could do, and to be visible. If
25 had they had any offers -- you know, any concerns that they

1 wanted to bring up.

2 Q At this time, how -- when this occurred, how was staffing
3 at Northeast Center?

4 A It was -- it was a struggle. It was tight.

5 Q Well, other than to be more visible, were there other
6 reasons you encouraged department heads and unit managers to
7 walk around the building and offer assistance?

8 A Let me -- I --

9 Q Did you actually provide assistance?

10 A Well, yes. I mean, if there was things -- different
11 people could do different things. I know when I personally
12 walked around the building, sometimes I got asked by the staff
13 on the floors because they didn't have enough people to get off
14 to go get some linens, or to go get towels, to go into the
15 supply area, because the supervisor was busy doing something
16 else. So I was able to go get -- whether it was Depends, or
17 some kind of creams that they might have needed from the supply
18 area.

19 Q I want to turn your attention now to Cathy Todd. Did you
20 know Cathy Todd?

21 A I did.

22 Q And how -- how do you know her?

23 A She was a nurse at the Northeast Center.

24 Q And in the fall of 2019, did you receive a complaint
25 regarding Cathy Todd?

1 A I did.

2 Q Do you recall when that was?

3 A November 12th, I believe is the date that I received it.

4 Q What was the complaint you received?

5 A I received a complaint from the -- from one of the CNAs
6 that worked on the unit with Cathy, that she had -- she had
7 very strong concerns about how Cathy talked --

8 JUDGE SANDRON: All right. We're -- so I think because
9 he's your witness, you need to lay the foundation for any
10 conversation that he had with -- with the -- the Plaintiff.

11 Q BY MS. LANOUEETTE: Was this a -- was this a conversation
12 with the CNA?

13 A No. I received a written statement.

14 Q Okay. I'm going to show you what's been marked as Exhibit
15 R-1. And to clarify, you have a binder of documents in front
16 of you; is that correct?

17 A Yes.

18 JUDGE SANDRON: Which -- which exhibit? That was?

19 MS. LANOUEETTE: R-1.

20 JUDGE SANDRON: 1. Okay.

21 Q BY MS. LANOUEETTE: I'll ask if -- I'll ask if you
22 recognize Exhibit R-1?

23 MS. PENDER: Can Ms. Lanouette display the document so we
24 can --

25 JUDGE SANDRON: Yeah.

1 MS. PENDER: -- so we can see what R-1 is?

2 MS. LANOUEETTE: I cannot. No, that's why I sent them
3 early to everyone.

4 JUDGE SANDRON: Okay. That's going to be a little bit of
5 a problem.

6 MS. HAMMONDS: I can --

7 MS. LANOUEETTE: This is what I asked about during
8 yes -- Monday's conference, was would I have to display them
9 for my own witnesses. And I did not get a response that I did.

10 MS. HAMMONDS: I -- I can put it up on the screen share.

11 JUDGE SANDRON: Okay.

12 MS. HAMMONDS: It was one of the documents to added to
13 SharePoint?

14 MS. LANOUEETTE: Yes.

15 JUDGE SANDRON: All right. I'm --

16 MS. HAMMONDS: One second.

17 JUDGE SANDRON: Okay.

18 MS. HAMMONDS: Can everyone see?

19 JUDGE SANDRON: Can we get to the top of it? Let's see.
20 Is that -- is that a one page?

21 MS. HAMMONDS: Yes. The first page just says R-1.

22 JUDGE SANDRON: Oh. Okay. Fine.

23 Q BY MS. LANOUEETTE: Mr. Weir, do you recognize Exhibit R-1?

24 A I do.

25 Q And what do you recognize it to be?

1 A That is a copy of the statement that I was given from the
2 CNA regarding Cathy Todd and her con -- the concerns she had
3 about the neighbors and Cathy Todd's behaviors.

4 Q Is that a true and accurate copy of the statement that you
5 received on Novem -- on or about November 12th, 2019?

6 A Yes.

7 Q Okay.

8 MS. LANOUE: Offer Exhibit R-1.

9 JUDGE SANDRON: Well, do -- do we -- oh, I see,
10 she's -- that's her purported signature.

11 MS. TUMINARO: Some voir dire on the document if the
12 General -- if the office of the General Counsel doesn't have
13 any first.

14 JUDGE SANDRON: Well --

15 MS. PENDER: Go ahead.

16 JUDGE SANDRON: -- Ms. Pender -- all right. Go ahead, Ms.
17 Tuminaro.

18 **VOIR DIRE EXAMINATION**

19 Q BY MS. TUMINARO: Mr. Weir, the -- this document is
20 from -- can you pronounce the name of this person?

21 A Sharanique Lewinson.

22 Q And Shar --

23 JUDGE SANDRON: Why don't we spell -- why don't we have it
24 spelled for the record while we're at it.

25 THE WITNESS: S-H-A-R-A-N-I-Q-U-E. And Lewinson,

1 L-E-W-I-N-S-O-N.

2 Q BY MS. TUMINARO: Thank you, Mr. Weir. And she's a CNA at
3 the facility; is that right?

4 A Yes. Yes.

5 Q Did -- did she write this document in your presence?

6 A No, she did not.

7 Q And did you ask her to prepare this statement?

8 A No, I did not.

9 Q Do you know who asked her to prepare this statement?

10 A No, I do not.

11 Q Do you know when the statement was written?

12 A No, I do not.

13 JUDGE SANDRON: There's no -- there's no date, I
14 don't -- I -- is there, on the document?

15 Q BY MS. TUMINARO: How did you come into possession of this
16 statement, Mr. Weir?

17 A Carolyn Carchidi, the acting director of nursing at the
18 time, brought it to me because it was -- had been given to her.

19 Q And do you know when -- when it was given to her?

20 A No, I do not.

21 MS. TUMINARO: I'm going to object to the statement to the
22 extent that there hasn't been a proper foundation laid for it.
23 He doesn't know -- he didn't watch anyone write it, he
24 didn't -- he didn't receive it directly from the person, he
25 doesn't know when it was written, and he doesn't -- and he

1 didn't find out from the person who gave it to him when it was
2 written.

3 JUDGE SANDRON: Ms. Pender, what --

4 MS. PENDER: I'm going to join into the Union's objection.

5 JUDGE SANDRON: And Ms. Joslin?

6 MS. JOSLIN: Same, Your Honor. Thank you.

7 JUDGE SANDRON: Well, I -- I think there's a problem with
8 it being, first of all, undated. So we don't know when these
9 events --

10 MS. LANOUEETTE: Your Honor --

11 JUDGE SANDRON: -- when they occurred.

12 MS. LANOUEETTE: -- I will have Ms. Lewinson testify to her
13 own statement --

14 JUDGE SANDRON: All right.

15 MS. LANOUEETTE: -- so we can --

16 JUDGE SANDRON: All right. We --

17 MS. LANOUEETTE: -- (indiscernible, simultaneous speech)
18 time.

19 JUDGE SANDRON: -- we -- we can defer, then, the question
20 of admitting the document.

21 MS. LANOUEETTE: That's fine.

22 **RESUMED DIRECT EXAMINATION**

23 Q BY MS. LANOUEETTE: What did you do after you received
24 Exhibit R-1?

25 A I immediately started an investigation into the

1 allegations. I requested the director of nursing and Julie
2 Cole, who is the director of medical records, to go and
3 interview two of the neighbors that were identified in this
4 letter.

5 Q Okay. And why did you choose Ms. Cole as a second person
6 to conduct these interviews?

7 A Ms. Cole has a relationship with the two neighbors; that
8 they feel comfortable with her and will talk to her. She has a
9 way to work with them.

10 Q Okay. I will show you what's been marked as Exhibit R-2.
11 And ask if you recognize Exhibit R-2?

12 A Yes, I do.

13 Q And what do you recognize that to be?

14 A That was the -- the summary of the in -- of the interviews
15 that Carolyn and Julie conducted with the two neighbors.

16 Q What did you do after these interviews were complete?

17 A When these two interviews were complete, and I had been
18 given this back, Carolyn and I con -- called Cathy Todd at
19 home.

20 Q Okay. And what happened during that call?

21 A I informed her that she -- that there had been some
22 allegations about her regarding how she speaks to the
23 neighbors, and that there -- we had to complete an
24 investigation. I did tell her -- I said, as a result of
25 this -- these allegations, that she would be suspended pending

1 the investigation. But we asked her if she wanted to come in
2 to provide a statement, or if she would rather do it over the
3 phone. And she said she would rather do it over the phone.

4 Q When you say, "we asked her", who else was present during
5 this phone call?

6 A Myself and Carolyn Carchidi.

7 Q Okay. I show you what's been marked as Exhibit R-4. And
8 ask if you recognize it? I'm sorry, R-3.

9 A Yes, I do.

10 Q And what do you recognize that to be?

11 A That is the summary of the conversation that Carolyn and I
12 had with Cathy Todd.

13 Q What did Ms. Todd have to say about the allegations you
14 described to her?

15 A She said that they were not true, and that she doesn't
16 speak to neighbors in a bad way, and that she had done nothing
17 wrong.

18 Q What did you do next in your investigation?

19 A We initiated the rest of the investigation by asking that
20 the social workers in the department of social work to go and
21 interview all of the neighbors on the unit to identify if
22 anyone had any other concerns. Carolyn Carchidi and Cindy
23 Pope, the unit manager on the unit, conducted interviews with a
24 few of the other staff that work the unit.

25 Q Okay. I want to show you what's been marked as Exhibit

1 R-4. And ask if you recognize it?

2 A Yes, I do.

3 Q And what do you recognize Exhibit R-4 to be?

4 A That is a -- a statement from Cindy Pope, the unit
5 manager on NRP4 where Cathy worked.

6 Q Okay. And then I show you what has been marked as Exhibit
7 R-5. And ask if you recognize it?

8 A Yes, I do.

9 Q And what do you recognize that to be?

10 A That is a summary of the conversation that Carolyn
11 Carchidi had with one of the other CNAs that worked on NRP4,
12 Cristina Plonski.

13 Q Okay. What was the result of the interviews with the
14 neighbors by social work?

15 A There were a -- two -- three -- there were two or three
16 other neighbors who identified behaviors of Cathy embarrassing
17 them in public, denying them medications if they didn't come
18 out to the desk to receive them. Just poor treatment of the
19 neighbors.

20 Q I show you what has been marked as Exhibit R-6.

21 MS. LANOUE: And Your Honor, R-6 is a multi-page
22 document. It's very large. It is paginated at the bottom.

23 JUDGE SANDRON: Okay.

24 Q BY MS. LANOUE: And I'll just ask if you recognize
25 these documents?

1 A Yes, I do.

2 Q What do you recognize these documents to be?

3 A These are the interviews that the social workers conducted
4 with the neighbors on NRP4.

5 Q And on the second page of each document, is there a
6 signature line?

7 A Yes, there is.

8 Q Okay. And who -- where it says, "Neighbor's signature",
9 who signed the document there?

10 A If the neighbor had the ability to sign it, they signed it
11 themselves.

12 Q Okay. And "Interviewer signature", who signed on that
13 line?

14 A The social worker representative who did the interview.

15 Q The documents contained in Exhibit R-6, are -- are those
16 documents made in the ordinary course of your business at
17 Northeast Center?

18 A Yes.

19 Q Is it the ordinary course of your business to make and
20 keep such documents?

21 A Yes.

22 Q How are documents, such as R-6, used in the course of
23 business at Northeast Center?

24 A We use these whenever we're doing an investigation that
25 involves neighbors; that we need to try to get a better idea of

1 how many other people might be affected by it -- something.

2 MS. LANOUE: Your Honor, we would offer R-6.

3 JUDGE SANDRON: Let's see, I don't -- do -- does -- do any
4 counsel think we need the names of the interviewers -- their
5 signatures -- do any of you feel that is -- would be benefit --

6 MS. LANOUE: Mr. Weir -- Mr. Weir can provide that.

7 JUDGE SANDRON: If -- if the parties feel it would be
8 necessary.

9 MS. PENDER: I think the names of the interviewers would
10 be -- would be helpful.

11 JUDGE SANDRON: All right. Why -- why don't we get that
12 then.

13 Q BY MS. LANOUE: Mr. Weir, who conducted the interviews
14 that are contained in R-6?

15 A Do you want me to list each one of them?

16 Q Yes, please.

17 A Okay.

18 JUDGE SANDRON: And if you'll go ahead and spell them,
19 mis -- so -- if you know the spelling.

20 THE WITNESS: Okay. The first one that I see here is
21 Erica, E-R-I-C-A. Last name is Rosa, R-O-S-A, hyphen, Gelig
22 (phonetic) -- Geligio, I think, G-E-L-I-G-I-O. The next one
23 that I see is Heather Britton-Schager. Heather is
24 H-E-A-T-H-E-R. Britton is B-R-I-T-T-O-N, hyphen, Schager,
25 S-C-H-R-A-G-E-R. I think -- pretty sure that's what it is.

1 The next one would be Tonya Coley. Tonya, T-O-N-Y-A, Coley,
2 C-O-L-E-Y. There's a couple that I don't -- I cannot read.

3 MS. TUMINARO: Could we go to the first page of R -- R-6,
4 to -- to -- I'm -- I'm not sure if I have the same first page,
5 but I'm wondering if he can identify that signature.

6 THE WITNESS: That's one of the ones I'm -- I can't read
7 the signature.

8 MS. TUMINARO: This one, yes, exactly. The -- the second
9 page, sorry, of R-6. You can't read the signature?

10 THE WITNESS: No.

11 JUDGE SANDRON: Let me just see if I understand.

12 These -- are these forms -- you know, these interviews, are
13 they conducted on a regular basis with --

14 THE WITNESS: When --

15 JUDGE SANDRON: -- patients -- or neighbors?

16 THE WITNESS: The -- whenever there's an investigation
17 that has to involve neighbors, the social workers have a form.
18 The questions might vary depending on what they are going to be
19 asking, what it's related to. But they make sure that they ask
20 all of the neighbors the same questions, so that way no one's
21 getting different questions.

22 JUDGE SANDRON: And -- and -- and are these when there
23 were questions about how the neighbors are being treated, that
24 the social workers conduct the interviews, if you know?

25 THE WITNESS: If there's an -- yes. If there's an

1 investigation, the social workers are the ones who interview
2 the neighbors, because they are the neighbor advocates. And
3 then myself, H -- human resources, or the department heads
4 would be interviewing with the -- the staff.

5 JUDGE SANDRON: Okay.

6 THE WITNESS: So -- but it always -- the social work ones,
7 they -- the questions -- they create one for each -- whatever
8 issue it is that they might be iden -- looking into --

9 JUDGE SANDRON: I see.

10 THE WITNESS: -- each time, and then -- but they make sure
11 that everyone gets asked the same questions.

12 I can continue with the names. The next name is Erika
13 Clemente, E-R-I-K-A. Clemente is C-L-E-M-E-N-T-E. The next
14 one is Stacey Wickeri, S-T-A-C-E-Y. And Wickeri is
15 W-I-C-K-E-R-I. All right. The next one is Dana Laster. Dana,
16 D-A-N-A, Laster, L-A-S-T-E-R. Looks like all the names that I
17 can recognize.

18 Q BY MS. LANOUEETTE: Mr. Weir, are you aware the individuals
19 that -- whose names you just spelled, what position do they
20 hold at Northeast Center?

21 A They are the social work -- it's in the social work
22 department. Some are social workers, some are the -- two --
23 two of them are discharge -- community reentry specialists, I
24 guess they call them here -- like, a discharge planner.

25 MS. HAMMONDS: Judge, before we move on, we have someone

1 in the waiting room, and -- I -- Icho, I-C-H-O.

2 JUDGE SANDRON: Anybody recognize that name?

3 MS. PENDER: No, Your Honor.

4 MS. LANOUEETTE: No, Your Honor.

5 MS. HAMMONDS: No. I'm sorry, that may be an observer. I
6 didn't -- I thought it was one word, but I think Cho (phonetic)
7 is the last name. Okay. Sorry.

8 JUDGE SANDRON: Okay. That's okay.

9 MS. LANOUEETTE: Your Honor, we would, again, offer Exhibit
10 R-6 as a business record of Northeast.

11 JUDGE SANDRON: Any voir dire on the document?

12 MS. PENDER: I just have -- I have one question, Your
13 Honor.

14 **VOIR DIRE EXAMINATION**

15 Q BY MS. PENDER: Mr. Weir, who actually writes the
16 information on these forms?

17 A Some -- most of the time, it is the social worker who
18 actually is doing the writing. Sometimes, depending on the
19 neighbor. In this situation, some of these neighbors are high
20 functioning and have the abilities to answer and write
21 themselves.

22 JUDGE SANDRON: To your knowledge, these are signed by
23 the -- if -- if the neighbor signs it, it's in the presence of
24 the social worker, to your knowledge?

25 THE WITNESS: Yes.

1 MS. PENDER: I have no objection, Your Honor.

2 JUDGE SANDRON: Any objection?

3 MS. TUMINARO: I have -- I just have a couple of
4 questions.

5 **VOIR DIRE EXAMINATION**

6 Q BY MS. TUMINARO: Mr. Weir, have you identified all the
7 social workers who were conducting the investigation at the
8 time of these neighbors?

9 A To you just now? No, there's a couple of signatures, and
10 I - it might be the same signature each time that I could not
11 read.

12 JUDGE SANDRON: But -- but all of them are -- were social
13 workers -- all -- all them were --

14 THE WITNESS: Yes.

15 JUDGE SANDRON: -- social workers?

16 THE WITNESS: Yes.

17 Q BY MS. TUMINARO: Did you say there was another title who
18 con -- conducted some of the interviews?

19 A They are in the social work department. They are
20 just -- their job title, though, is community reintegration
21 specialist. So the discharge planner.

22 JUDGE SANDRON: I see.

23 A But they are in the social workers.

24 Q BY MS. TUMINARO: Mr. Weir, you didn't see -- you weren't
25 present when any of these interviews were conducted; is that

1 right?

2 A Correct.

3 Q Okay. And -- and so you don't have personal knowledge
4 about who actually filled out the form, whether it was the
5 social worker, or the resident, or neighbor, correct?

6 A Each form, no. Correct.

7 Q Okay.

8 MS. TUMINARO: I don't have any objection to the document.
9 I -- I'd like to, at some point, identify the signatures on
10 some of -- that were missing, but we can do that later. No
11 objection.

12 JUDGE SANDRON: Ms. Joslin?

13 MS. JOSLIN: Your Honor, just one question.

14 **VOIR DIRE EXAMINATION**

15 Q BY MS. JOSLIN: Mr. Weir, on how many occasions during
16 your employment with Northeast Center has this type of
17 investigation with interview forms been utilized?

18 A I don't know the number, but several of them.

19 Q Okay. So like, more than five or --

20 A I'd say, yes, more than five.

21 Q Okay. Okay.

22 MS. JOSLIN: Your Honor, I have no objection.

23 JUDGE SANDRON: All right. The document is received.

24 **(Respondent Exhibit Number 6 Received into Evidence)**

25 **RESUMED DIRECT EXAMINATION**

1 Q BY MS. LANOUEETTE: Okay. Did you receive any other
2 information as part of your investigation?

3 A Yes, I did.

4 Q Show you what has been marked as Exhibit R-7. And ask if
5 you recognize it?

6 A Yes, I do.

7 Q And what do you recognize R-7 to be?

8 A It is another statement from Cindy Pope, the unit manager
9 on NRP4.

10 Q What issue did Ms. Pope identify that was different or new
11 from issues that had already been identified?

12 A In this one, Ms. Pope had actually -- would -- when Cathy
13 Todd was suspended and could not come in, Ms. Pope actually had
14 to stay and work the unit for the evening shift that Cathy was
15 supposed to be here. And as she was passing the medications,
16 she identified several medication issues. And that's what that
17 statement is.

18 Q What other information was provided to you during the
19 course of your investigation?

20 A Heather Britton-Schrager, the social worker on the unit,
21 she had brought to me -- one was a statement that she had
22 been -- she had given to the prior director of nursing, Kathy
23 McCormick, and one was a note that was -- had been
24 written -- she had written in the medical records, that she had
25 also brought to attention of Kathy McCormick -- our -- up, and

1 that hadn't been addressed. And they were also complaints from
2 neighbors regarding Cathy Todd and the way she spoke to them in
3 their (audio interference).

4 Q And for the record, Kathy McCormick, how is that spelled?

5 A Capital M-C, and capital C-O-R-M-I-C (sic).

6 Q And Kathy, how is that -- is --

7 A Oh.

8 JUDGE SANDRON: If you know.

9 THE WITNESS: I'm not sure. I think she's a K-A-T-H-Y.

10 Q BY MS. LANOUE: Thank you. Did you receive any other
11 former com -- previous complaints regarding Cathy Todd?

12 A There was one more that Ms. Pope had given me, but it
13 was -- she had presented to me as something that she had given
14 to the director of nursing. But it was a year before this,
15 prior to my time here, that apparently had never been
16 addressed.

17 Q Show you what has been marked as Respondent's R-8. And
18 ask if you recognize the three pages in R-8?

19 A Yes. Page 1 is the second -- is the one that Cindy Pope
20 had given me from the year before. Page 2 is the statement
21 that Heather Britton-Schrager had given to Kathy McCormick
22 regarding Cathy Todd. And the third one is the progress note
23 that Heather had printed out and given to me as another issue
24 that had been brought up.

25 Q Are you familiar with the New York State requirement for

1 abuse prevention as it relates to long-term care facilities?

2 A Yes.

3 Q Okay. And what are, generally, the requirements, as you
4 understand them?

5 A Any -- any -- anything that's reported as abuse -- verbal,
6 mental, physical, sexual, is all reportable under the New York
7 State Department of Health regulations.

8 Q Okay. I'll show you what's been marked as Respondent's
9 Exhibit 12, which is a multi-page document. And ask if you
10 recognize this document?

11 A I do.

12 Q What do you recognize Respondent's 12 to be?

13 A It is the New York State Department of Health incident
14 reporting manual. It's the guide that tells us what -- what
15 should and shouldn't be reported, and how to do it.

16 Q Okay. And you did not make Exhibit 12, correct?

17 A No. No.

18 Q How do you receive exhibit --

19 A (Indiscernible, simultaneous speech).

20 Q -- how do you receive Exhibit 12 at the facility?

21 A New York State Department of Health.

22 Q All right. Do you keep and use Exhibit 12 in the ordinary
23 course of your business?

24 A Oh, yes.

25 Q Is the ordinary course of your business to -- to keep and

1 use Exhibit 12?

2 A Yes.

3 MS. LANOUE: Would offer Exhibit 12

4 JUDGE SANDRON: Any voir dire, Ms. Pender, or objections?

5 MS. PENDER: No, Your Honor, no objection.

6 JUDGE SANDRON: And from other counsels?

7 MS. TUMINARO: No objection.

8 MS. JOSLIN: No objection.

9 JUDGE SANDRON: All right. The document is received.

10 **(Respondent Exhibit Number 12 Received into Evidence)**

11 Q BY MS. LANOUE: Mr. Weir, could you identify the pages
12 where the definitions of verbal or mental abuse are located?

13 A Starts on page -- verbal abuse starts on page 10 and
14 continues into page 11; and mental abuse can be found on page
15 12.

16 Q Okay. And is that -- the definitions contained in Exhibit
17 R-12, the definitions that Northeast Center uses when it
18 instructs employees regarding verbal and mental abuse?

19 A Yes.

20 Q Okay. Do employees at Northeast Center receive training
21 in abuse prevention?

22 A Yes.

23 Q How often?

24 A It's required upon hire, and at least annually thereafter.

25 Q Okay. Show you what has been marked as Exhibit R-9. And

1 ask if you recognize it? And I apologize if they're out of
2 order.

3 JUDGE SANDRON: Excuse me.

4 A Yes, I -- I recognize this.

5 Q BY MS. LANOUEETTE: What do you recognize Exhibit R-9 to
6 be?

7 A It is the -- Cathy Todd's personal employee
8 in -- in-service history.

9 Q And what is an in-service?

10 A The education -- required education on whatever subject it
11 is. You know, there's lots of different ones. Like I said,
12 it's on here -- abuse prevention, accident prevention, HIPAA.

13 Q is Exhibit R-12 a document that's made in the ordinary
14 course of business at Northeast Center?

15 A Yes.

16 Q Is it the ordinary course of business to make and keep
17 such a document at Northeast Center?

18 A Yes.

19 Q Why do you make and keep Exhibit R-9 -- documents like
20 R -- Exhibit R-9?

21 A It's required by the Department of Health regulations. We
22 are required to show that every employee receives their
23 mandatory in-services that the Department of Health requires
24 every year. And when they come to do surveys, they ask for
25 those records.

1 Q Okay. Where is Exhibit R-9 kept at Northeast Center?

2 A In human resources at the -- with the staff education.

3 Q Okay.

4 MS. LANOUELLE: Offer Exhibit R-9.

5 JUDGE SANDRON: Any voir dire or objections?

6 MS. PENDER: No objection, Your Honor.

7 MS. TUMINARO: I -- I just have a question for the
8 witness.

9 **VOIR DIRE EXAMINATION**

10 Q BY MS. TUMINARO: Mr. Weir, how frequently are staff
11 supposed to be trained in abuse prevention?

12 A I said that they are -- it's required upon hire, and then
13 at least a minimum of once a year, annually.

14 Q And so on page 1 of this document, it appears that Ms.
15 Todd received abuse prevention on November 5th of 2018; is that
16 right?

17 A Yes.

18 Q So that was more than a year before she was discharged; is
19 that correct?

20 A Correct.

21 MS. TUMINARO: Thank you. I have no objections.

22 JUDGE SANDRON: All right. The document is received.

23 **(Respondent Exhibit Number 9 Received into Evidence)**

24 **RESUMED DIRECT EXAMINATION**

25 Q BY MS. LANOUELLE: Does the facility have policies

1 regarding medication administration?

2 A Yes.

3 Q Show you what has been marked as Exhibit R-10. And ask if
4 you recognize it?

5 A Yes, I recognize that.

6 Q What do you recognize Exhibit R-10 to be?

7 A It is the facility policy on the self-administration of
8 the medication.

9 Q Okay. And is that document made in the ordinary course of
10 business at Northeast Center?

11 A Yes.

12 Q Is it the ordinary course of business to make and keep
13 such a document at Northeast Center?

14 A Yes.

15 Q Where is that document kept?

16 A It's on -- we have a -- all of the policies are on a
17 special -- like, it's drive, a computer system, so.

18 Q Okay.

19 MS. LANOUILLE: We would offer R -- Exhibit R-10.

20 JUDGE SANDRON: An -- Any objection?

21 MS. PENDER: No objection.

22 JUDGE SANDRON: Any objections from other counsels?

23 MS. TUMINARO: No objection.

24 MS. JOSLIN: Your Honor, just a quick question, if I may.

25 VOIR DIRE EXAMINATION

1 Q BY MS. JOSLIN: Was this the policy that was in effect in
2 2019, Mr. Weir?

3 A Yes.

4 Q Okay.

5 MS. JOSLIN: No objection, Your Honor.

6 JUDGE SANDRON: All right. Respondent's Exhibit 10 is
7 received.

8 **(Respondent Exhibit Number 10 Received into Evidence)**

9 **RESUMED DIRECT EXAMINATION**

10 Q BY MS. LANOUELETTE: Mis -- Mr. Weir, do you have a -- a
11 second medicine administration policy?

12 A Yes.

13 Q Show you what has been marked as Exhibit R-11. And ask if
14 you recognize it?

15 A Yes, I recognize that.

16 Q What do you recognize it to be?

17 A It's our facility policy and procedure for administration
18 times of medication.

19 Q Okay. And is that document made in the ordinary course of
20 business at Northeast?

21 A Yes, it is.

22 Q And is it the ordinary course of business to make and keep
23 such a document?

24 A Yes, it is.

25 Q Where is that document kept at Northeast?

1 A Again, it would be kept in the drive on the computer with
2 all of the policies for the facility.

3 MS. LANOUEETTE: Offer Exhibit R-10.

4 JUDGE SANDRON: Any voir dire or objections from opposing
5 counsels?

6 MS. LANOUEETTE: I'm sorry, R-11.

7 **VOIR DIRE EXAMINATION**

8 Q BY MS. PENDER: Mr. Weir, is this the -- the policy that
9 was in effect in 2019?

10 A Yes.

11 MS. PENDER: No objection from the General Counsel, Your
12 Honor.

13 JUDGE SANDRON: Any objections from other counsels?

14 MS. TUMINARO: No objection.

15 MS. JOSLIN: Your Honor, just a quick question.

16 **VOIR DIRE EXAMINATION**

17 Q BY MS. JOSLIN: Mr. Weir, how do you ensure that your
18 employees actually see these policies? Are they advised to go
19 to the internet or intranet system, or how does that work?

20 A It's not an internet system. If they ever have
21 the -- they are available for the staff to -- to -- to see at
22 any time. So if they do not have the ability to get on to a
23 computer at time, they -- the supervisors can always provide it
24 for them; the unit managers can provide it for them.

25 Q So the employees are required to make an effort to see

1 them?

2 A I mean, they're available just on -- at -- at -- at their
3 computer that they have.

4 Q Do all employees have computers at the facility?

5 A The nurses do, yes.

6 Q All the employees at the facility have access?

7 A Not all. No, not all employees.

8 MS. LANOUE: Objection to --

9 JUDGE SANDRON: Yes.

10 MS. LANOUE: This is way beyond voir dire of the
11 document.

12 MS. JOSLIN: Well, Your Honor, I -- I don't necessarily
13 agree with that because if this is being offered as a business
14 record, I think that we have a right to know how it's published
15 to the employees as a business record; that's all I'm asking.

16 JUDGE SANDRON: All right. And I -- I think that the
17 witness said that the nursing staff -- or the nursing employees
18 that would be responsible for the medication, they have it
19 available by their computers.

20 Did I get that right?

21 THE WITNESS: Yes.

22 JUDGE SANDRON: They all have individual computers?

23 THE WITNESS: Yes. They -- when they're working, they
24 have the -- the computer that they're working with that has
25 the -- the -- it's -- it's just their internal computer. It's

1 assigned to whoever's on that shift at that time.

2 JUDGE SANDRON: Oh -- oh, like at the nursing stations,
3 they have the computers?

4 THE WITNESS: Yes. Yes.

5 JUDGE SANDRON: And other -- other classifications of
6 employees wouldn't be involved with the administration of
7 medicine, right?

8 THE WITNESS: Correct.

9 JUDGE SANDRON: Okay. Any -- any other questions? Ms.
10 Joslin, any?

11 MS. JOSLIN: No, Your Honor. Thank you.

12 JUDGE SANDRON: Any objections?

13 MS. TUMINARO: I just have one quick further question.

14 **VOIR DIRE EXAMINATION**

15 Q BY MS. TUMINARO: Under 3.2, Mr. Weir, are those different
16 kinds of medications that are supposed to be given at different
17 times?

18 A Those are different -- well, those are the times. It's
19 how the medication is ordered by the physician.

20 Q So when it says, "3.2.1.1 QOD every other day: 0900", what
21 does that mean?

22 A It mean that medication is given every other day at 9:00
23 in the morning.

24 Q That's -- but medication is QOD?

25 A Yes.

1 Q And then below that, when it says -- all of these
2 different acronyms correspond to the -- to -- or, sorry, the
3 letters following the 3.2, they all correspond to different
4 medicines; is that right?

5 A Not medicines, the times that they're given.

6 Q The -- so would the -- the time is after the -- well, so
7 3.2.1.2 QD, what -- what does that refer to?

8 A Daily, every day.

9 Q So QD means daily?

10 A Yes.

11 Q Oh, I see. So this is an acronym for what it is
12 afterwards. So that -- so 3.2.1.3 BID, that means two times
13 per day?

14 A Yes.

15 Q And are these acronyms written in the residents' charts?
16 How is one to know?

17 A In the -- in the MAR, yes. In the medication
18 administration record, yes.

19 Q So the medications are -- are -- depending on what the
20 doctor has prescribed, they need to be given according to this
21 schedule?

22 A Whatever the schedule is that the doctor has ordered.

23 Q So -- so it's not that -- that everyone gets medication at
24 the same time of day, it depends on when the doctor has ordered
25 it; is that what you're saying?

1 A Yes.

2 Q I understand. Thank you, very much.

3 JUDGE SANDRON: All right. Respondent's Exhibit 11 is
4 received.

5 **(Respondent Exhibit Number 11 Received into Evidence)**

6 **RESUMED DIRECT EXAMINATION**

7 Q BY MS. LANOUEETTE: Mr. Weir, other than the interviews
8 that you described for us, and the statements that you've
9 described for us, and the policies you've described for us, was
10 there anything else that you had used in your -- making your
11 decision regarding Ms. Todd?

12 A Not that I can think of now.

13 Q Okay. What was the decision with regard to Ms. Todd?

14 A To terminate her employment.

15 Q Who made that decision?

16 A Myself and Carolyn Carchidi, together.

17 Q And from your perspective, why did you believe she was
18 terminated?

19 A When we did the investigation, it revealed to us that
20 there was not just one incident that had precipitated this
21 investigation. That during the investigation, it was a long
22 history of violations -- mistreatment of the neighbors, the
23 medication issues, the violation of residents' rights regarding
24 the food issues, taking food away from people, denying people
25 their phone calls. It was -- it was -- it -- several occasions

1 over periods of time that it just -- it was identified this was
2 just her behavior, and it was completely unacceptable.

3 Q Okay. What did you do when you ma -- had made the
4 decision?

5 A Carolyn and I called Ms. Todd and asked her to come in,
6 and she came to my office. And we sat with her. And I
7 explained to her that, you know, we did this --

8 JUDGE SANDRON: All right. All right. Before you do
9 that, do you want to just lay a foundation for that through the
10 witness because --

11 Q BY MS. LANOUEETTE: To the best of your recollection, when
12 was it that you met with Ms. Todd?

13 A I -- it was, I think, about a week later. So around
14 November 18th or 19th, I believe.

15 Q Okay. And what time of day was it, to the best of your
16 memory?

17 A I -- the afternoon.

18 Q Okay. Who was present when you had this conversation with
19 her?

20 A Just myself and Carolyn Carchidi.

21 Q And what did you say to Ms. Todd?

22 A I told her that we had completed the investigation, and
23 based on the investigation, we identified that we felt that
24 this was an ongoing issue. That there were several residents
25 and staff who identified her having -- you know, mistreating

1 the residents -- everything I had said before, verbally and
2 mentally, and the physical foods issues -- taking food away
3 from people, taking food off their trays, denying them phone
4 calls. And I went through all of that with her.

5 And she continued to deny it. And I told her that,
6 unfortunately, this was what we had revealed, and it was not
7 acceptable. And that we were terminating her employment.

8 Q What, if anything, did you say regarding reporting her?

9 A I did tell Ms. Ca -- Ms. Todd that these allegations, and
10 the level of things that we had identified, could rise to the
11 level of reporting to the Department of Health.

12 Q Why did you tell her that?

13 A I wanted her to understand that her behavior is -- it's
14 not acceptable anywhere; that you cannot do it. We are charged
15 with taking care of people. We cannot be adding to their
16 stressors and possibly damaging their -- their well-
17 being -- their health and well-being.

18 Q Did you tell her you were going to report her to the
19 nursing -- nurse licensing board?

20 A No.

21 Q Okay. Did you tell her you were going to de -- to report
22 her to the Department of Health?

23 A No.

24 Q Okay. And did you make any report to either a
25 nurse -- nurse licensing board or the Department of Health?

1 A No.

2 Q Why did you not report this to the Department of Health?

3 A I felt that the neighbors -- if she was terminated, she
4 wasn't here, the neighbors were going to be safe, and that was
5 the most important thing.

6 Q Want to show you now what has been marked as Exhibit R-13.
7 And ask if you recognize it?

8 A Yes, I do.

9 Q What do you recognize it to be?

10 A It was the notice of termination for Cathy Todd.

11 JUDGE SANDRON: Do we already have this in Joint Exhibit
12 5?

13 MS. PENDER: No, it -- no, that's the -- the letter
14 itself. This is the --

15 JUDGE SANDRON: Oh, I see.

16 MS. PENDER: -- personnel file document, I think.

17 JUDGE SANDRON: Oh. Okay. Thank you. Yeah,
18 that's -- that's different. Go ahead.

19 Q BY MS. LANOUE: Who wrote the information that is
20 written into Exhibit R-13?

21 A I did.

22 Q Okay. And where is Exhibit R-13 kept at the facility?

23 A It's part of Cathy's personnel file in human resources.

24 Q Did you make this document in the ordinary course of your
25 duties as the administrator at Northeast Center?

1 A Yes.

2 Q And is it the ordinary course of business at Northeast
3 Center to make and keep such a document?

4 A Yes.

5 Q Why did you fill out Exhibit R-13?

6 A I took the lead in this investigation with Cathy Todd
7 because Carolyn was brand new. She had only been -- when this
8 started, she had only been the director of nursing for less
9 than two weeks, and is not familiar, at the time, with how to
10 conduct an investigation. So it was a learning for her.

11 Q Okay. And what -- what training, if any, do you have in
12 conducting investigations like this?

13 A I was an administrator, at that time, for over 17 years,
14 and I have to do education training for my license every year.
15 And I have always attended certain programs that talk about
16 disciplines and completing investigations.

17 Q Okay. And what experience did you have in completing
18 investigations regarding employees and patient treatment?

19 A Again, I've been doing this for 17 years. I've had to go
20 through these investigations in every facility I've ever worked
21 in, and I've completed many of them.

22 Q More than 20?

23 A Yes.

24 Q More than 50?

25 A I don't know about that.

1 MS. LANOUEETTE: Offer Exhibit R-13

2 JUDGE SANDRON: Any voir dire or objections?

3 MS. PENDER: No objection from the general counsel.

4 JUDGE SANDRON: Okay. Well here -- here are --

5 MS. TUMINARO: Just --

6 JUDGE SANDRON: Yes.

7 **VOIR DIRE EXAMINATION**

8 Q BY MS. TUMINARO: Just so -- can you read, Mr. Weir, the
9 reason given -- what -- what is that sentence? I'm having some
10 difficult -- difficulty reading it. "Reason given for the
11 termination was", what did you write?

12 JUDGE SANDRON: I think it's getting bigger now, so I
13 think we can --

14 MS. TUMINARO: Does it say, "Inappropriate behavior" --

15 JUDGE SANDRON: We have --

16 MS. TUMINARO: -- "in resident areas"?

17 JUDGE SANDRON: Yes.

18 A Yes.

19 Q BY MS. TUMINARO: Okay. Thank you.

20 JUDGE SANDRON: So hearing no objections, Respondent's
21 Exhibit 13 is received.

22 **(Respondent Exhibit Number 13 Received into Evidence)**

23 **RESUMED DIRECT EXAMINATION**

24 Q BY MS. LANOUEETTE: But -- Mr. Weir, I'm going to show you
25 now Exhibit 14. And ask if you recognize Exhibit 14?

1 A Yes, I do.

2 Q Page (audio interference). And what do you recognize it
3 to be?

4 A That is a summary of the investigation that we completed.

5 Q Who made Exhibit 14?

6 A I did.

7 Q Why did you make Exhibit 14?

8 A I do a summary of all investigations, whether involved
9 staff, or residents, or neighbors.

10 Q Okay. How did you -- how did you make Exhibit 14?

11 A I'm not sure what you're asking me.

12 Q Did you write Exhibit 14 at the time of the events that
13 are dated in it, or did you write it at some other time?

14 A No, I had notes that I was keeping at the time. And you
15 can see -- like, date on 11/12, I had summarized the beginning
16 part of our investigation. So it was an ongoing document. And
17 then after the 13th, when I had more information, I just
18 continued adding on.

19 Q Mr. Weir, did you make Exhibit 14 in the ordinary course
20 of your duties as the administrator at Northeast Center?

21 A Yes.

22 Q And is it the ordinary course of your duties to make and
23 keep such a document at Northeast Center?

24 A Yes.

25 MS. LANOUE: Offer Exhibit R-14.

1 JUDGE SANDRON: Any voir dire or objections?

2 MS. PENDER: Yes. Just a -- a short voir dire, Your
3 Honor.

4 **VOIR DIRE EXAMINATION**

5 Q BY MS. PENDER: Mr. Weir, when did you begin writing this
6 document?

7 A The 13th or 12th. Whatever the date's at the top.

8 Q And when did you finish writing this document?

9 A If we go to the bottom, it would probably -- it would have
10 been finished after we had met with Cathy Todd and did the
11 termination.

12 Q And after that date, did you go back and add anything to
13 it at any point?

14 A No.

15 MS. PENDER: No objection.

16 JUDGE SANDRON: Any -- any other voir dire or objections?

17 MS. TUMINARO: Just - just a follow-up on that line of
18 questioning.

19 **VOIR DIRE EXAMINATION**

20 Q BY MS. TUMINARO: Did you go back, Mr. Weir, and edit the
21 document at any time following November 19th, of 2019?

22 A No.

23 JUDGE SANDRON: Okay. Any objections to the document?

24 MS. TUMINARO: No objection.

25 JUDGE SANDRON: And Ms. Joslin?

1 MS. JOSLIN: No objection. Thank you.

2 JUDGE SANDRON: All right. The document is received.

3 **(Respondent Exhibit Number 14 Received into Evidence)**

4 **RESUMED DIRECT EXAMINATION**

5 Q BY MS. LANOUEETTE: Mr. Weir, what, if any, knowledge did
6 you have regarding Cathy Todd's union activities at the time of
7 her termination?

8 A I didn't have any specific knowledge of her involvement or
9 activities. I just knew that she had told several people that
10 she was a supporter of it.

11 Q Did her support for the Union in any way affect your
12 investigation or the outcome in this investigation?

13 A No.

14 Q Did you terminate Ms. Todd for union activity?

15 A No.

16 JUDGE SANDRON: Do you recall approximately when you first
17 heard about her involvement in -- with union activity?

18 THE WITNESS: No, I -- I don't recall.

19 Q BY MS. LANOUEETTE: Okay. Mr. Weir, I'm now going to move
20 to the CSS department. In your capacity as administrator, are
21 you familiar with the CSS department?

22 A Yes.

23 Q Okay. And what is the role, generally, of CSS employees
24 at the facility?

25 A Security and safety of the neighbors, and of the staff.

1 Q Okay. What is the reporting structure of the CSS
2 department?

3 A There's the director of the department, then the
4 supervisors, and then the CSS staff.

5 Q Show you what has been marked as Exhibit R-17. And ask if
6 you recognize it?

7 A Yes.

8 Q What do you recognize R-17 to be?

9 A It's the job description for the CSS employees.

10 Q Okay. On the first line, does that indicate it's CSS
11 employees, or is this --

12 A Oh, supervisors in the first line. Yeah, supervisor.

13 Q Thank you. What authority do CSS supervisors have with
14 regard to the staff on their shifts?

15 A They are responsible for the staff on their shifts.

16 Q Are -- do they have authority to discipline those staff?

17 A Yes.

18 Q Do they have authority to move people around to different
19 assignments?

20 A Yes.

21 Q Do they have authority to troubleshoot during their
22 shifts?

23 A Yes.

24 JUDGE SANDRON: Well, yeah -- I mean, it might -- might be
25 better if he can describe the nature of the duties rather than

1 have it as a conclusion.

2 Q BY MS. LANOUE: Mr. Weir, are you generally familiar
3 with the duties of a CSS supervisor?

4 A Generally, yes.

5 Q Okay. What, generally, are those job duties?

6 A They are to provide the assignments for the employees that
7 are here -- the CSS staff that are here for the day. They are
8 to monitor for call-ins and latenesses. They are to try to
9 fill the schedule if there's callouts, trying to get people to
10 stay. They are to continue to -- to round the building and
11 ensure that their employees -- the CSS employees, are doing
12 what they're supposed to be doing.

13 Q Who provides supervision for employees on the night shift?

14 A The CSS supervisors.

15 Q Okay. In the building, as a whole, how many supervisors
16 are typically on -- in the building on the night shift?

17 A There's one nursing supervisor and then the CSS
18 supervisors. Might be one or two, depending on the day.

19 Q How does the schedules of the CSS supervisors on the
20 nights shift work?

21 A I -- they're both here full-time, five nights a week. So
22 there are a couple of nights where they overlap and there are
23 two of them on.

24 Q And when there are not two of them on, how many CSS
25 supervisors are on?

1 A Just one.

2 Q Do you know Josh Endy?

3 JUDGE SANDRON: Oh.

4 A I do.

5 JUDGE SANDRON: Can we scroll -- can we scroll down to the
6 second page? I think there's -- thanks, just so we can see it.
7 Thank you. Oh, yeah, go --

8 MS. LANOUEETTE: And I will wait to offer this, Your Honor.

9 JUDGE SANDRON: Yes, I -- I --

10 MS. LANOUEETTE: (Indiscernible, simultaneous speech) --

11 JUDGE SANDRON: -- just wanted to see the page, but that's
12 fine. You can wait.

13 MS. LANOUEETTE: -- another witness who may -- is, I think,
14 more familiar with the details of CSS work.

15 JUDGE SANDRON: That -- that's fine. You were asking
16 about Mr. Endy, I believe.

17 MS. LANOUEETTE: Sorry, yes.

18 Q BY MS. LANOUEETTE: Do you know Joshua Endy?

19 A Yes.

20 Q How do you know him?

21 A He was employed here as a CSS supervisor on the night
22 shift.

23 Q I would show you what has been marked as Exhibit R-19.
24 And I want to ask if you recognize this document?

25 A I do.

1 Q What do you recognize this document to be?

2 A This is a change of status form when Josh was promoted
3 from CSS employee to the CSS supervisor position.

4 Q Okay. And is this a document that's made in the ordinary
5 course of business at Northeast Center?

6 A Yes.

7 Q And is it the ordinary course of business to make and keep
8 such documents at Northeast Center?

9 A Yes.

10 Q What is the date of the -- the -- the effective date of
11 the change in his status?

12 A May 14th, 2017.

13 Q Okay. And when was the document signed?

14 A May 16th, 2017.

15 MS. LANOUILLE: Offer Exhibit R-19.

16 JUDGE SANDRON: Do -- do you know who the department
17 manager was who signed as the manager, if you know?

18 THE WITNESS: Marcos DeAbreu.

19 JUDGE SANDRON: And just -- and -- and ha -- has there
20 always been a pay differential between what -- you know, the
21 regular CSA -- CSS employees are paid and what he was paid as
22 the CSS supervisor?

23 THE WITNESS: Yes.

24 JUDGE SANDRON: Okay. Any further voir dire or
25 objections?

1 MS. PENDER: No -- no -- no objection.

2 JUDGE SANDRON: Okay.

3 MS. JOSLIN: No objection.

4 MS. TUMINARO: No objection.

5 JUDGE SANDRON: Okay. The document is received.

6 **(Respondent Exhibit Number 19 Received into Evidence)**

7 Q BY MS. LANOUEETTE: So did there come a time that you
8 learned Mr. Endy was no longer employed at the facility?

9 A Yes.

10 Q Okay. How did you learn that?

11 A I received a phone call at home. Two of them.

12 Q When did that occur?

13 A It was sometime in November 2019. I don't remember the
14 exact date.

15 Q What time of day did you receive the phone call?

16 A About 7:30, 7:40 in the evening.

17 Q What did you do -- you said you received two phone calls.
18 Who was the first phone call from?

19 A The first one was from the operations consultant, Keith
20 Peraino. He called me.

21 Q And who was the second phone call from?

22 A Marcos DeAbreu, the director of CSS.

23 Q What did Keith Pera -- Peraino tell you?

24 A He told me that they had just had a meeting with Mr. Endy,
25 and that he had exploded during the meeting. And -- and at

1 that time, he threw his badge down across the table. And he
2 said, I don't need this fucking job. And as he started to walk
3 out, that's when he threw open the door, damaging the -- the
4 wall. And that Marcos was walking him out.

5 MS. JOSLIN: I'm going to object to the hearsay here.

6 JUDGE SANDRON: All right. Well, we'll receive it as far
7 as what was presumably told to the witness, not for the truth
8 of the matter asserted.

9 Q BY MS. LANOUEETTE: And what did Mr. DeAbreu tell you in
10 his call?

11 A He told -- he called me telling me that -- that Josh had
12 exploded and had threw his badge down and cursed and he was --
13 walked him out.

14 JUDGE SANDRON: Again, it will be received for -- for the
15 purpose I mentioned.

16 MS. JOSLIN: Thank you, Judge.

17 Q BY MS. LANOUEETTE: What did -- what did you do following
18 those phone calls?

19 A I drove back to the facility.

20 Q And when you arrived at the facility, what did you do?

21 A I met with Keith and Marcos. And I believe there was
22 another consultant still here. And they were explaining to me
23 what had taken place. I directed Marcos to write a statement
24 before he left; to give it to me. And that was it.

25 Q Okay. Show you what has been marked as Exhibit R-20. And

1 ask if you recognize it?

2 A Yes.

3 Q And what do you recognize Exhibit R-20 to be?

4 A That was the statement that Marcos DeAbreu had given me
5 that night when he -- when I asked him to write a statement
6 about what had occurred.

7 Q The next day, did you make photographs regarding the
8 damage that you had been told about?

9 A Yes.

10 Q I'll show you what's been marked as Exhibit R-21. And I'm
11 going to ask if you recognize the -- the word and pictures in
12 Exhibit R-21?

13 A I do.

14 Q What do you recognize Exhibit R-21 to be?

15 A The -- these are pictures of the door, and how the room
16 had been set up, and the damage that was done.

17 Q Why did you make Exhibit R-21?

18 A It was just -- when there was this kind of violence, I
19 needed to have -- show exactly what had -- what we had at that
20 time, what it looked like.

21 Q Who took the pictures that are contained -- photographs
22 that are contained in Exhibit R-21?

23 A I don't know who took these pictures.

24 Q Were you present when the pictures were taken?

25 A I was present.

1 Q And did you direct that the pictures be taken?

2 A Yes.

3 Q Are the images contained in R-21 true and accurate
4 depictions of the setup and damage that you observed at
5 Northeast Center?

6 A Yes.

7 Q Okay.

8 JUDGE SANDRON: Could you tell us -- I know we're --

9 MS. LANOUEITE: I was going to go through each one in
10 here.

11 JUDGE SANDRON: All right.

12 MS. LANOUEITE: Yeah.

13 JUDGE SANDRON: Yes, go ahead.

14 Q BY MS. LANOUEITE: There is a cover page to these
15 photographs; who wrote that cover page?

16 A I did.

17 Q Okay. And -- so if you need to refer to it, Mr. Weir,
18 that's there. But what is depicted in the first picture of R-
19 21?

20 A It's showing the -- the door when it's fully open; that it
21 doesn't actually touch the wall.

22 JUDGE SANDRON: Okay. And these, when they're actually
23 going to be exhibits, they're paginated, right?

24 MS. LANOUEITE: I thought they were, Your Honor. I -- I
25 will fix that tonight and reupload them.

1 JUDGE SANDRON: That's fine.

2 MS. LANOUEITE: And there are some numbers at the top, but
3 that's --

4 JUDGE SANDRON: Oh, I see, I see. There's a 1.

5 MS. LANOUEITE: Yeah, I will fix it -- I'll put Bates --
6 not the -- the 1 of 2 tonight and reupload it.

7 JUDGE SANDRON: Okay. That might be helpful. But -- but
8 we can go ahead now.

9 Q BY MS. LANOUEITE: What -- what is depicted in the
10 photograph with a 2 at the top?

11 A That just shows the door to the conference room open --
12 when it's open.

13 Q And what is depicted in the photograph with a 3 at the
14 top?

15 A That is a picture of the garbage can that was actually
16 behind the door at the time.

17 Q Now, the garbage can in picture 3, is that the one that
18 was there?

19 A No. It is the same type of garbage can that was actually
20 there.

21 Q What is depicted in Exhibit - or sorry -- photograph
22 labeled 4?

23 A That is the damage to the -- the wall behind the door
24 where the door handle hit the wall.

25 Q What is depicted in photograph labeled 5?

1 A You can see that that little -- there's a little L-shaped
2 wall sticking out behind the -- it's behind the door. So if
3 you actually would open the door, the door would hit that wall,
4 and it would not be able to touch the -- the big wall.

5 Q What is depicted in the photograph labeled 6?

6 A That's where you can see the edge of that little alcove --
7 L wall. You can see the damage that is showing there from when
8 the door was swung open. It --

9 Q What is de -- sorry.

10 A -- it hit the back -- no, I'm sorry.

11 Q What is depicted in photograph 7?

12 A That is the top on the -- where the door and the -- the
13 corners and the crack in the wall. You can see how it cracked
14 the edge near the top at the wall --

15 MS. LANOUE: Offer --

16 A -- that line next to it.

17 MS. LANOUE: Offer Exhibit R-21.

18 JUDGE SANDRON: Any voir dire or objections?

19 MS. JOSLIN: Your Honor, if I may have a question?

20 JUDGE SANDRON: Yes.

21 **VOIR DIRE EXAMINATION**

22 Q BY MS. JOSLIN: I might've missed this, and I apologize.
23 What -- what was the date these pictures were taken?

24 A The day after the incident occurred. So November 20th,
25 that was the date.

1 JUDGE SANDRON: And you were there when -- when they were
2 taken?

3 THE WITNESS: The pictures were taken, yes.

4 MS. JOSLIN: Thank you, Your Honor.

5 JUDGE SANDRON: Any objections? All right.

6 Hearing none, Respondent's Exhibit 21 is received.

7 **(Respondent Exhibit Number 21 Received into Evidence)**

8 **RESUMED DIRECT EXAMINATION**

9 Q BY MS. LANOUEETTE: Mr. Weir, I will now show you what's
10 been marked as Respondent's Exhibit 22. And ask if you
11 recognize it?

12 A Yes, I do.

13 Q What do you recognize Exhibit -- what -- what is depicted
14 in Exhibit R-22?

15 A That's a close-up picture of the damage from the wall
16 where the handle was.

17 Q Who took - who took the photographs in Exhibit R-22?

18 A I did.

19 Q And why did you take it?

20 A When I looked at the other pictures, I quickly decided
21 that we need -- I needed one that was a direct of the -- of the
22 actual damage only, so you can see it directly.

23 JUDGE SANDRON: And when did you take that picture?

24 THE WITNESS: The same day, the -- the 20th, the same day.

25 JUDGE SANDRON: So that's like an enlargement of -- of the

1 earlier photo showing the dent in the door?

2 THE WITNESS: In the wall.

3 JUDGE SANDRON: Or in the wall, excuse me.

4 THE WITNESS: Yes.

5 MS. LANOUEETTE: Offer Exhibit R-22.

6 MS. TUMINARO: I -- I would object to R-22 as not a -- not
7 a true and accurate representation of the subject matter of
8 which it purports to be.

9 JUDGE SANDRON: And what do you base that?

10 MS. TUMINARO: It's an enlargement. He said that it --
11 it's -- this is not the size of the damage. This is an
12 enlarged image that he altered in order to --

13 THE WITNESS: No.

14 MS. TUMINARO: -- enhance the -- the alleged damage.

15 MS. LANOUEETTE: That's not what he said, Your Honor.

16 THE WITNESS: No.

17 JUDGE SANDRON: So was this a close-up of the damage?

18 THE WITNESS: It is just a picture just of the damage.
19 It's not enlarged or anything. It was just of the damage only.

20 JUDGE SANDRON: So you -- you took a closer -- close-up
21 view of the damage; is that what it was?

22 THE WITNESS: Yes.

23 MS. PENDER: I have -- I have a question -- a voir dire
24 question, Your Honor.

25 JUDGE SANDRON: Yes.

1

VOIR DIRE EXAMINATION

2

Q BY MS. PENDER: Mr. Weir, if you go back to R-21 and look at photograph 4 of that exhibit.

3

A Yes.

4

Q Why does the damage in that photo face the opposite way as the damage in R-22?

5

A I don't know if it's just turned upside down. I don't know.

6

MS. LANOUEETTE: Oh, that may be my error, Your Honor. It may need to be rotated probably one more time.

7

MS. PENDER: I think under "View", it should say, "rotate view". And then if you -- you might have to do that twice to get it 180.

8

JUDGE SANDRON: So maybe the --

9

MS. LANOUEETTE: I could scan it -- take the sticker off and rescan it.

10

JUDGE SANDRON: Yes, that might --

11

MS. PENDER: I'm fine --

12

JUDGE SANDRON: Yes?

13

MS. PENDER: I'm fine if we just note that it should be flipped upside down.

14

JUDGE SANDRON: All right. That might be simpler. Okay.

15

MS. PENDER: I have no objection.

16

JUDGE SANDRON: So all right.

17

MS. PENDER: Oh --



1 JUDGE SANDRON: Yes.

2 Respondent's Exhibit --

3 MS. PENDER: I was just going to say that we unflip them,
4 but.

5 JUDGE SANDRON: What were you going to say?

6 MS. PENDER: Oh, nothing. It's fine.

7 JUDGE SANDRON: No, we can -- we can --

8 MS. LANOUEETTE: I can do --

9 JUDGE SANDRON: Well, either way, I -- I think it's clear.
10 So whichever way counsel wants to handle it.

11 So Respondent's Exhibit 22 is received.

12 **(Respondent Exhibit Number 22 Received into Evidence)**

13 **RESUMED DIRECT EXAMINATION**

14 Q BY MS. LANOUEETTE: Prior to November -- prior to taking
15 these pictures, how often were you in the administrative
16 conference room?

17 A Every day.

18 Q And prior to taking these -- or directing that these
19 pictures be taken, did you see any of the damage that is
20 depicted in R-21 or R-22?

21 A No.

22 Q Who made the decision to terminate Joshua Endy?

23 A Marcos DeAbreu.

24 Q I'll show you what has been marked as Exhibit R-49.

25 MS. HAMMONDS: Do you know about how far back it is?

1 MS. LANOUEITE: It's pretty far back, near the end. It's
2 probably easier to go to the end and scroll up than --

3 JUDGE SANDRON: It's 56 --

4 MS. PENDER: It's on page 606 of the PDF.

5 JUDGE SANDRON: Okay. That makes it easier to find.
6 There, 606.

7 MS. LANOUEITE: Thank you.

8 Q BY MS. LANOUEITE: Mr. Weir, do you recognize Exhibit R-
9 49?

10 A Yes.

11 Q And what do you recognize R-49 to be?

12 A It was a sum -- my summary -- of the -- incident.

13 Q On what -- you were not present when Mr. Endy left the
14 facility correct?

15 A Correct.

16 Q So on what did you base your write-up in R-50 -- 49?

17 A This was based on the information -- the statement that I
18 had received from Marcos DeAbreu and from speaking with Keith
19 Peraino, the operation consultant.

20 Q Why did you make Exhibit R-49?

21 A Again, it was another in -- it's part of an investigation
22 and incident. I summarize all of them.

23 Q Where is R-49 kept at the facility?

24 A This would be in his file -- Josh Endy's file.

25 Q Is R-49 made in the ordinary course of your duties as

1 administrator at Northeast Center?

2 A Yes.

3 Q Is it the ordinary course of your duties to make and keep
4 such documents?

5 A Yes.

6 MS. LANOUEETTE: Offer R-49.

7 JUDGE SANDRON: All right. I think it can be admitted but
8 not necessarily for the truth of the matters asserted since the
9 witness was not present.

10 Does any counsel have an objection to it being received
11 for that ba -- on that basis?

12 MS. PENDER: On that basis, Your Honor, I would have no
13 objection.

14 MS. TUMINARO: No objection on that basis.

15 MS. JOSLIN: No, Your Honor. Thank you.

16 JUDGE SANDRON: Okay. Then Respondent's Exhibit 49 is
17 received on the terms that I mentioned.

18 **(Respondent Exhibit Number 49 Received into Evidence)**

19 MS. LANOUEETTE: Thank you.

20 Q BY MS. LANOUEETTE: In November of 2019, did the facility
21 have an employee handbook?

22 A Yes.

23 Q And I will now show you what's been marked as Exhibit R-
24 23. And ask if you recognize it?

25 JUDGE SANDRON: You've got a background noise. I don't

1 know why.

2 MS. LANOUEETTE: If it's a humming noise, it might be the
3 heat system in the room I'm in.

4 JUDGE SANDRON: I don't know. I think there's a siren
5 outside. I'm trying to put myself on mute. Oh, here we go.

6 MS. HAMMONDS: What number was it?

7 MS. LANOUEETTE: 23.

8 JUDGE SANDRON: This is the handbook.

9 MS. LANOUEETTE: Yes.

10 Q BY MS. LANOUEETTE: Mr. Weir, what do you recognize Exhibit
11 R-23 to be?

12 A The facility's handbook -- employee handbook.

13 Q And is this the facility's handbook that was in effect in
14 2019?

15 A Yes.

16 Q Is this document made in the ordinary course of business?

17 A Yes.

18 Q The ordinary course of business at Northeast for this
19 document to be made and kept?

20 A Yes.

21 Q How is Exhibit 23 provided to employees?

22 A All employees are given a copy of it upon hire during
23 orientation.

24 Q And if they lose their copy or misplace it, how can they
25 obtain another copy?

1 A They can just ask the human resources.

2 MS. LANOUEITE: Offer Exhibit 23.

3 JUDGE SANDRON: Any objections?

4 MS. PENDER: No objection.

5 JUDGE SANDRON: All right.

6 MS. JOSLIN: No objection.

7 MS. TUMINARO: No objection.

8 JUDGE SANDRON: Respondent's Exhibit 23 is received.

9 **(Respondent Exhibit Number 23 Received into Evidence)**

10 Q BY MS. LANOUEITE: Mr. Weir, does the employee handbook
11 contain any policies regarding discipline?

12 A Yes.

13 Q What page does the discipline policy start on?

14 A On page 41.

15 Q And how long does the discipline policy go?

16 A Oh, it goes from page 41 through almost the bottom of page
17 45.

18 Q Do the -- does the discipline policy address -- well, I'm
19 just going to leave that there. Does the handbook contain any
20 policies regarding solicitation of employees?

21 JUDGE SANDRON: Well, I think you can -- I mean, if it's
22 in the document, if you want to just refer to it, you can.
23 Because it -- if it's in there --

24 MS. LANOUEITE: Okay.

25 JUDGE SANDRON: -- you can just cite -- you can cite what

1 provision it is.

2 Q BY MS. LANOUEETTE: Mr. Weir, where is the solicitation
3 policy in the handbook?

4 MS. HAMMONDS: Do you want me to find it?

5 JUDGE SANDRON: You could go ahead and direct him. I
6 mean, if it's in the document -- there's no question it's in
7 the document. Oh, is it in this -- the -- these provisions
8 that he's in, the disciplinary, or is it somewhere else?

9 MS. LANOUEETTE: It is not in the disciplinary.

10 JUDGE SANDRON: Oh, oh, okay. I see.

11 A It's on page 14.

12 JUDGE SANDRON: Oh, I see. Okay. It's not in that same
13 location.

14 Q BY MS. LANOUEETTE: And what is --

15 A On page 14.

16 Q BY MS. LANOUEETTE: What is the facility's policy with
17 regard to solicitation of employees by other employees?

18 JUDGE SANDRON: Well, I'll tell you what -- I'll tell you,
19 the document speaks for itself.

20 MS. LANOUEETTE: Okay. That's fine.

21 JUDGE SANDRON: Yeah. You don't need to have him repeat
22 it.

23 And that's page 14?

24 THE WITNESS: The bottom of 14 to the top of 15.

25 JUDGE SANDRON: Okay. We can all take a look at it.

1 Q BY MS. LANOUEETTE: All right. Mr. Weir, in your capacity
2 as administrator, are you generally familiar with the unit
3 managers facility?

4 A Yes.

5 Q And how do unit managers fit in the management of the --
6 the facility -- well, let me ask first. What department are
7 unit managers located in?

8 A Nursing.

9 Q Okay. And who do they report to?

10 A The unit managers report to the assistant directors of
11 nursing.

12 Q Okay. And who reports to unit managers?

13 A The nursing staff and CNAs -- the LPNs, RNs on the units
14 and the CNAs.

15 Q How often do you hold management meetings at the facility?

16 A Yes.

17 Q How often?

18 A It's the -- I guess, I have department head meetings once
19 a month. But then there's other management -- nursing holds
20 their own management meetings, weekly.

21 Q And when you hold department head meetings, who attends
22 those meetings?

23 A The department heads and the assistant directors of
24 nursing.

25 Q Are there also meetings where you have both department

1 heads and unit managers?

2 A Yeah, I mean, we have morning report every day with the
3 department --

4 Q What's morning -- sorry. What is morning report?

5 A We get -- at 8:30 in the morning every day, we get
6 together. And all of the department heads and unit managers
7 are on a part of the meeting where we review everything that
8 occurred the day before, medically, behaviorally. We discuss
9 if any department has any issues or concerns, if there's any
10 admissions coming in or people being discharged, if there's any
11 projects that they really need done by someone that they're not
12 hearing back from. It's an opportunity for everybody to speak
13 up.

14 Q And how often is morning report?

15 A Monday through Friday.

16 Q Okay. How long does morning report usually take?

17 A About a half hour.

18 Q What time is it?

19 A 8:30, we start.

20 Q Show you what has been marked as Exhibit 25. And ask if
21 you recognize it? Do you recognize the documents in Exhibit
22 25?

23 A Okay.

24 Q What do you recognize those documents to be?

25 A These are emails that I sent to the department heads and

1 unit managers regarding meetings that we were having.

2 Q And what is the -- and did you make those emails -- why
3 did you send those emails?

4 A I would make them to notify the managers and the
5 department heads that we were having an afternoon meeting.
6 That may have been decided later in the day. So I -- it was
7 easier just to shoot them -- everybody an email so that they
8 would all get it.

9 Q Okay.

10 JUDGE SANDRON: Who did -- did you have meetings every
11 morning and every afternoon, or how -- how did that work? Or
12 did you have them as needed?

13 THE WITNESS: No. There's -- the morning report is
14 something --

15 JUDGE SANDRON: Right.

16 THE WITNESS: -- that we do every single day. That's
17 different.

18 JUDGE SANDRON: So -- so these notifications were for
19 other types of meetings?

20 THE WITNESS: Yes.

21 Q BY MS. LANOUE: Are the emails contained in Exhibit R-
22 25 true and accurate copies of the emails that you sent to unit
23 managers and department heads regarding meetings?

24 A Yes.

25 MS. LANOUE: Offer Exhibit R-25.

1 MS. PENDER: No objection.

2 JUDGE SANDRON: I think somebody needs to mute.

3 MS. LANOUEETTE: That's me. There's a code being called.

4 JUDGE SANDRON: Oh, okay. That's fine. It should stop
5 momentarily.

6 Any objections from other counsels?

7 MS. JOSLIN: No, Your Honor.

8 MS. TUMINARO: No, Your Honor.

9 JUDGE SANDRON: The document is received.

10 **(Respondent Exhibit Number 25 Received into Evidence)**

11 Q BY MS. LANOUEETTE: Did you from time to time -- Mr. Weir,
12 let me show what has been marked as Exhibit R-25. And ask if
13 you recognize it?

14 JUDGE SANDRON: Oh, I think you just did 25.

15 THE WITNESS: Yeah.

16 Q BY MS. LANOUEETTE: Oh, I'm sorry. R-26. And ask if you
17 recognize it?

18 A Yes.

19 Q Now, who is Marion Day?

20 A She is the corporate compliance person for our -- for
21 Upstate Service Group.

22 Q And how did you come to receive R-26 from her?

23 A She just sends them to all the administrators in the
24 organization plus other -- other people. Every day, there's a
25 new alert that they send us for education and training

1 purposes.

2 Q And when you receive these alerts from corporate
3 compliance, what do you do with them?

4 A Well, I review them all. And sometimes, they -- like this
5 particular one, is appropriate for staff to have. Some don't
6 have anything to do with our industry, so I don't include them.
7 But if something comes out related to long-term care, nursing,
8 or stays, medications, or anything of that, I forward them out
9 to all of the appropriate departments and unit -- whether it's
10 a unit manager or department head, depending on who -- what the
11 compliance alert is regarding so that they can use it to
12 educate.

13 Q Okay. And who did you send this particular alert to?

14 A To the department heads and unit managers.

15 Q Is this a true and accurate copy of the email that you
16 forwarded to department heads and unit managers?

17 A Yes.

18 MS. LANOUE: Offer Exhibit R-26.

19 JUDGE SANDRON: Any objection --

20 MS. PENDER: Your Honor --

21 JUDGE SANDRON: Yes.

22 MS. PENDER: -- I'm going to object just because I don't
23 understand the relevance of this.

24 JUDGE SANDRON: Ms. Lanouette, maybe you can --

25 Q BY MS. LANOUE: Mr. Weir, do you send these alerts to

1 all employees or to department heads and unit managers?

2 A To department heads and unit managers.

3 Q And what is it you expect department heads and unit
4 managers to do with these alerts?

5 A To get the information, whether they print it out, but to
6 review it so -- with their employees, so that they are, you
7 know, giving them information regarding things that are brought
8 up in this -- the topics, in the subjects.

9 MS. LANOUE: Does that address the concern?

10 MS. PENDER: That's fine. I will withdraw my objection.

11 JUDGE SANDRON: Hearing no objection, the exhibit is
12 received.

13 **(Respondent Exhibit Number 26 Received into Evidence)**

14 Q BY MS. LANOUE: Mr. Weir, I'm going to show you what's
15 been marked as Exhibit R-27. Do you from time to time send
16 directions to the unit managers and department heads regarding
17 issues at the facility?

18 A Yes.

19 Q Do you recognize R-27?

20 A Yes, I do.

21 Q And what is the second page of R-27?

22 A It's a memorandum that I put together regarding attendance
23 and punching in and out.

24 Q Who wrote the second page of Exhibit R-27?

25 A I did.

1 Q And why did you write it?

2 A These were concerns that had been brought up by the
3 employees to me.

4 Q Okay. Who -- on -- on the first page of Exhibit R-27, who
5 did you send this memorandum to?

6 A To the department heads and the unit managers.

7 Q And what was your purpose in sending it to them?

8 A So that they would print it out and educate their staff.

9 MS. LANOUE: Offer to the R -- oh, I'm sorry.

10 Q BY MS. LANOUE: Is Exhibit R-27 a true and accurate
11 copy of the email you sent and its attachment?

12 A Yes.

13 MS. LANOUE: Offer Exhibit R-27.

14 JUDGE SANDRON: Any objections?

15 MS. PENDER: No objection.

16 JUDGE SANDRON: All right. Respondent's Exhibit 27 is
17 received.

18 **(Respondent Exhibit Number 27 Received into Evidence)**

19 Q BY MS. LANOUE: Mr. Weir, what is the NBI Unit?

20 A The Neurobehavioral Intensive Unit.

21 Q I think we've heard some description, but could you tell
22 us, what is unique about the NBI Unit?

23 A The NBI Unit is a locked unit that can manage up to 20
24 neighbors who have got behaviors that are a danger to others.
25 So they are placed there for closer supervision and monitoring.

1 Q Show you what has been marked as Respondent R-40 -- I'm
2 sorry -- R-30. And ask if you recognize it?

3 JUDGE SANDRON: One question. Who makes the determination
4 that these particular neighbors, you know, are potentially --

5 MS. LANOUE: I'm sorry. It's 30 not 40.

6 THE WITNESS: Okay. The -- it's -- it's an
7 interdisciplinary team with the program director of the brain
8 injury program, the psychiatrists, the neuropsychologist,
9 social workers, nursing. Some people are getting admitted to
10 that unit directly from an admission to the facility. They
11 might be coming from a facility where they have had a history
12 of behaviors ;that we need to monitor them to keep them secure
13 until we can get a better idea of what their behaviors really
14 are here. And other times, it's our neighbors from the, I want
15 to say, general population who have exacerbated behaviors.
16 They start going -- sometimes, they start refusing their
17 medications and they might have behaviors, they start acting
18 out or whatever the reason why. And their behaviors become so
19 intrusive that they become a danger to other neighbors, whether
20 it's -- usually it's a physical attack, and sometimes it's
21 towards other staff. And so they -- the team has to review it
22 because there's a whole criteria on how people can be placed on
23 that unit.

24 JUDGE SANDRON: I see. And this may be self-explanatory.
25 But are these people -- these neighbors, are they generally

1 involuntarily placed in the facility or voluntary --
2 voluntarily or both?

3 THE WITNESS: Into the facility or the unit?

4 JUDGE SANDRON: Well, actually, into the facility itself,
5 can they either be, like, check in voluntarily or are they
6 ordered to?

7 THE WITNESS: It's -- there's no medical order because we
8 fall under nursing home regulations.

9 JUDGE SANDRON: Oh, I see.

10 THE WITNESS: There are regulations to the -- to the
11 behavioral program. But they can't be forced in -- in here.
12 However, many of them have been deemed they don't have
13 competence --

14 JUDGE SANDRON: Oh, I see.

15 THE WITNESS: -- and many neighbors have legal
16 guardians --

17 JUDGE SANDRON: Oh.

18 THE WITNESS: -- outside. And so they determine that they
19 cannot go into their community and that they need to be here.

20 JUDGE SANDRON: I see. Okay. Thank you.

21 Q BY MS. LANOUE: Mr. Weir, I'll ask you if you recognize
22 Exhibit R-30?

23 A Yes, I do.

24 Q And what do you recognize it to be?

25 A It is the overall NBI policy for the NBI Unit.

1 Q And who's involved in developing the policies for the NBI
2 Unit?

3 A It was developed before I ever got here. I know that the
4 program director of the program was involved in it. And I
5 can't answer everybody else that was involved in determining
6 it.

7 JUDGE SANDRON: So this was in effect when you arrived?

8 THE WITNESS: Yes.

9 JUDGE SANDRON: And it's -- it's -- and it's still in
10 effect?

11 THE WITNESS: It's been updated since -- since I've
12 arrived.

13 JUDGE SANDRON: And this version here --

14 THE WITNESS: Was the version that was in place.

15 Q BY MS. LANOUEETTE: In 2019?

16 A Yes.

17 Q How do you know that?

18 A The revision date is there from November 1st, 2013.

19 Q Is Exhibit R-30 made in the ordinary course of business at
20 Northeast Center?

21 A Yes.

22 Q Is it the ordinary course of business to make and keep
23 such a document?

24 A Yes.

25 Q Why do you have Exhibit R-30?

1 A It's a general outline of the whole -- the special
2 programming that goes on -- it is entailed on for that unit,
3 for the NBI Unit.

4 Q Do you have a policy for any other medical unit?

5 A Specific, no.

6 Q Okay. So why is there a specific policy for the NBI Unit?

7 A It's required by the regulations. There had to be a
8 policy directly for this program.

9 JUDGE SANDRON: Which regulations? Are you talking about
10 state regulations?

11 THE WITNESS: Yes. Yes.

12 Q BY MS. LANOUEETTE: And if we look at the first page of
13 Exhibit R-30, does that list the regulations that are relevant
14 to this policy?

15 A Yes. At the bottom there, you can see the New York CRR
16 Title 10, section 415.39, specialized programs for residents
17 requiring behavior interventions.

18 JUDGE SANDRON: That answers my question.

19 MS. LANOUEETTE: Offer Exhibit R-30.

20 JUDGE SANDRON: Any objections?

21 MS. PENDER: I have two quick questions.

22 JUDGE SANDRON: Yes.

23 **VOIR DIRE EXAMINATION**

24 Q BY MS. PENDER: Mr. Weir, has this policy been updated
25 since you became administrator of Northeast?

1 A Yes.

2 Q When did that take place?

3 A Just in 2020.

4 Q And that's not reflected on -- under the revised dates
5 here?

6 A No.

7 Q Is there a more recently printed version of this with --
8 that reflects the 2020 revision date?

9 A I would have to get a copy of it printed out for it.

10 Q And if you look --

11 JUDGE SANDRON: But of course, that wouldn't have been in
12 effect at the time --

13 MS. PENDER: Right, right.

14 JUDGE SANDRON: -- of the unfair -- alleged unfair labor
15 practices.

16 Q BY MS. PENDER: If you go to the -- the last page of R-30,
17 is this policy also given to neighbors?

18 A I can't answer that. I don't know.

19 MS. PENDER: You don't know, okay.

20 I have no objection.

21 JUDGE SANDRON: All right. Hearing no objections,
22 Respondent's Exhibit 30 is received.

23 **(Respondent Exhibit Number 30 Received into Evidence)**

24 **RESUMED DIRECT EXAMINATION**

25 Q BY MS. LANOUE: Mr. Weir, do you know Tara Golden?



1 A I do.

2 Q How do you know her?

3 A She was the unit manager on the NBI Unit when I started
4 working here.

5 Q Show you what has been marked as Exhibit 31. And ask if
6 you recognize it?

7 A Yes, I do.

8 Q What do you recognize it to be?

9 A That was the change of status form for Tara Golden when
10 she went from being an RN nurse to taking the RN unit manager
11 position on NBI.

12 Q And to be clear, that -- that change occurred before you
13 were the administrator at the facility?

14 A Yes.

15 Q Mr. Weir, is this document made in the ordinary course of
16 business at Northeast Center?

17 A Yes.

18 Q Is it kept in the ordinary course of business at Northeast
19 Center?

20 A Yes.

21 Q Where is this document kept?

22 A In Ms. Golden's employee personnel file.

23 MS. LANOUE: Offer Exhibit R-31.

24 JUDGE SANDRON: I think we may already have it. But the
25 department manager who signed it, do you recognize -- that's

1 under --

2 THE WITNESS: Kathy McCormick.

3 JUDGE SANDRON: McCormick. Okay.

4 Any -- any voir dire or objections?

5 MS. PENDER: No objection.

6 JUDGE SANDRON: Respondent's Exhibit 31 is received.

7 **(Respondent Exhibit Number 31 Received into Evidence)**

8 Q BY MS. LANOUEETTE: Now, Mr. Weir, I have one question
9 about Respondent's 31. This indicates an hourly rate for the
10 unit manager. Is that how unit managers were paid?

11 A I'm sorry. They -- repeat that. You broke up before --

12 Q How are unit -- how are unit managers paid?

13 A They are salaried employees.

14 Q So while this document indicates an hourly rate, it would
15 have to be --

16 JUDGE SANDRON: Well, actually, it's kind -- it's kind of
17 ambiguous --

18 MS. LANOUEETTE: Right.

19 JUDGE SANDRON: -- somewhat. It just says \$30, so.

20 THE WITNESS: Yeah.

21 JUDGE SANDRON: But -- so -- so from the time when you
22 arrived, do you know how -- how she was paid?

23 THE WITNESS: She was salaried when I arrived, yes.

24 Q BY MS. LANOUEETTE: As the unit manager on NBI, did Ms.
25 Golden communicate with you regarding changes being made to the

1 unit?

2 A Yes.

3 Q I'll show you what has been marked as Exhibit 32. And ask
4 if you recognize it?

5 A Yes, I do.

6 Q What do you recognize it to be?

7 A It was an email that Ms. Golden sent to me a week after I
8 got here telling me what she and the previous administrator had
9 been working on for the NBI Unit.

10 Q And is it a true and accurate copy, the email that was --
11 that you received from Ms. Golden?

12 A Yes.

13 MS. LANOUEETTE: Offer Exhibit 32.

14 JUDGE SANDRON: And I take it, you forwarded this to
15 counsel?

16 MS. LANOUEETTE: He did not, Your Honor. But
17 unfortunately, when I uploaded the documents from the link from
18 Mr. Weir, and then in order to upload it into SharePoint, it
19 puts my name on the top.

20 JUDGE SANDRON: I see. All right. So we'll just leave
21 that portion out of consideration.

22 MS. LANOUEETTE: I could've redacted it, but I was
23 concerned --

24 JUDGE SANDRON: No, that's all right.

25 MS. LANOUEETTE: -- it would look odd if I did.

1 JUDGE SANDRON: That's not a problem. We just won't
2 consider that portion of the document.

3 Any objections to -- or voir dire for the -- as to the
4 document itself?

5 MS. PENDER: Just a brief voir dire, Your Honor.

6 **VOIR DIRE EXAMINATION**

7 Q BY MS. PENDER: Mr. Weir, who is the Seth that is referred
8 to in this document?

9 A Who is the what?

10 Q Seth -- the person named Seth.

11 A Seth Rinn was the administrator prior to my arriving here.

12 Q Does he currently have a position with Northeast?

13 A He is a regional -- regional administrator.

14 Q And lower down, John Walters (sic passim), that's the head
15 of maintenance?

16 A Yes, at that time.

17 MS. PENDER: No objection.

18 MS. LANOUEETTE: And Seth --

19 JUDGE SANDRON: Hearing --

20 Yes, Ms. --

21 MS. LANOUEETTE: Seth is S-E-T-H. Rinn is R-I-N-N.

22 JUDGE SANDRON: Thank you.

23 Hearing no objections, the document is received.

24 **(Respondent Exhibit Number 32 Received into Evidence)**

25 **RESUMED DIRECT EXAMINATION**

1 Q BY MS. LANOUEETTE: Show you what has been marked as
2 Exhibit 33. And ask if you recognize this document?

3 A Yes, I do.

4 Q And what do you recognize it to be?

5 A It is an email from Tara Golden to John Walters, the
6 director of maintenance at the time, and I'm copied on it.
7 Regarding the -- one of the projects that she had initiated on
8 the unit.

9 Q Is this email a true and accurate copy of the email you
10 received from Ms. Golden regarding the project?

11 A Yes.

12 MS. LANOUEETTE: Offer Exhibit -- sorry -- 33.

13 JUDGE SANDRON: Any objections or --

14 MS. PENDER: No objection.

15 MS. LANOUEETTE: Now --

16 JUDGE SANDRON: Respondent's --

17 Yes, Ms. --

18 MS. LANOUEETTE: Sorry.

19 JUDGE SANDRON: Respondent's 33 is received.

20 **(Respondent Exhibit Number 33 Received into Evidence)**

21 Q BY MS. LANOUEETTE: Now, Mr. Weir, I want to ask you about
22 the project. What projects did Ms. Golden advise you of when
23 you started?

24 A They were -- there were two projects related to safety for
25 the staff on the unit. One of them, I think, involved

1 purchasing special mirrors that they could put in different
2 locations so that they could have visual of the whole unit from
3 specific offices and places -- locations. So if they were
4 sitting in their office, they could see in there; they could
5 see around the corners. That they were at angle, so they could
6 see who was walking down the hall and things like that.

7 And the second one was a little panic button setup, so
8 that if a recreation or the program specialist were in the
9 dining room or the eden (phonetic) where the neighbors were
10 having an activity or a meal or something of that, that the --
11 if they became aggressive and agitated, that the -- they could
12 push the panic button and it would alarm in the units, so the
13 CSS and nursing staff knew to come out to address the
14 aggression, to make people safe.

15 Q I'm going to show you what has been marked as Exhibit R-
16 34. And ask -- I'm sorry -- R-35. And ask if you recognize
17 it?

18 A Yes, I do.

19 Q And what do you recognize R-35 to be?

20 A That's an email from Tara Golden to some -- the department
21 heads and some of the staff that worked on the NBI Unit.

22 Q And is this a true and accurate copy of the email you
23 received?

24 A Yes.

25 MS. LANOUE: Offer Exhibit R-35.

1 JUDGE SANDRON: Any objections?

2 **VOIR DIRE EXAMINATION**

3 Q BY MS. PENDER: Mr. Weir, who is Ron Goldman?

4 A He is the psychiatrist.

5 Q Okay.

6 MS. LANOUEETTE: And Goldman is spelled G-O-L-D-M-A-N.

7 JUDGE SANDRON: Thank you.

8 MS. PENDER: No objection.

9 JUDGE SANDRON: The document is received.

10 **(Respondent Exhibit Number 35 Received into Evidence)**

11 **RESUMED DIRECT EXAMINATION**

12 Q BY MS. LANOUEETTE: Now, Mr. Weir, the title of this email
13 is NBI Phone Calls. Was Ms. -- what problem was Ms. Golden --
14 did Ms. Golden bring problems to -- to you regarding phone
15 calls?

16 A Yes.

17 Q And what were those problems, generally?

18 A The -- the way the NBI Unit is set up is that the
19 neighbors -- there are scheduled time for the neighbors to make
20 private phone calls. The phone on the unit for them to use is
21 locked up, and they don't have access to it all the time. So
22 they would have time scheduled where the CSS employees would
23 unlock the door and allow the person to make the phone call
24 that they were supposed to make. And -- but the nature of the
25 population, sometimes, they can get very aggressive, wanting to

1 make their phone calls, and it could develop into aggressive
2 physical altercations with the CSS staff or within each -- with
3 the other neighbors trying to get access to making their phone
4 calls.

5 Q So what did Ms. Golden temporarily do regarding phone
6 calls?

7 A At this time, there was -- she felt there wasn't enough
8 staff on the unit to safely conduct the phone calls, so she --

9 MS. JOSLIN: Objection, Your Honor. That's hearsay. He
10 should be talking about what he told her rather than what she
11 felt.

12 JUDGE SANDRON: Ms. Lanouette, any response to that?

13 Q BY MS. LANOUEETTE: Mr. Weir, what did Ms. Golden relay to
14 you?

15 A In this email?

16 JUDGE SANDRON: Well, I think the email speaks for itself.
17 So we have it. So what was she --

18 Q BY MS. LANOUEETTE: Did Ms. Golden temporarily suspend
19 phone calls on the unit for --

20 A Yes.

21 Q And was she -- did she have the authority to do that?

22 A Yes.

23 Q Did Ms. Golden communicate to other department heads
24 regarding employee issues on her email?

25 A Yes.

1 Q Show you what has been marked as -- although, it may be
2 in -- Exhibit 34. And ask if you recognize it?

3 A Yes, I do.

4 Q Did Ms. Golden have the authority to set the requirements
5 that she was setting in Exhibit 34?

6 A Yes.

7 MS. LANOUEETTE: And Exhibit 34 is already in evidence
8 and --

9 JUDGE SANDRON: 34, yes. No -- no, wait. 34, right.
10 Keep these in order, right. 34 has been admitted.

11 MS. LANOUEETTE: Yes. Is this not?

12 MS. TUMINARO: I don't think 34 has been admitted, Your
13 Honor.

14 JUDGE SANDRON: Oh, it hasn't. Maybe I checked it too
15 soon.

16 MS. TUMINARO: She went from 33 to 35.

17 JUDGE SANDRON: Right. So 34 was --

18 THE COURT REPORTER: I have 34 received yesterday, Judge.

19 JUDGE SANDRON: Okay. It's -- okay. Well, we still need
20 to deal with that as far as admission.

21 Go ahead then, Ms. Lanouette. I think -- how many more do
22 you --

23 MS. TUMINARO: It was admitted yesterday, okay.

24 Q BY MS. LANOUEETTE: Okay. Mr. --

25 JUDGE SANDRON: Wait, was it -- let's see.

1 THE COURT REPORTER: Yes, it was, Judge. I have it as
2 admitted yesterday.

3 JUDGE SANDRON: Yes, right, right. It was admitted.
4 You're right. It was admitted yesterday.

5 MS. TUMINARO: I apologize, Your Honor. My mistake.

6 JUDGE SANDRON: Okay. Thank you, Mr. Baker; you're
7 correct.

8 Q BY MS. LANOUEETTE: Did you direct Ms. Golden to send the
9 email contained in Exhibit R-34?

10 A No.

11 Q Okay. Mr. Weir, was Ms. Golden able to hold events for
12 her staff on the NBI Unit?

13 A Yes.

14 Q Show you what has been marked as Exhibit R-36. And ask if
15 you recognize it?

16 A Yes, I recognize that.

17 Q And what do you recognize it to be?

18 A It was an email from Ms. Golden to a variety of department
19 heads that had staff working on the unit, including myself.
20 And about having a staff-appreciation day for the staff on the
21 NBI Unit.

22 Q Okay. And in terms of when you started and when this
23 email was sent, how much time was there between the two?

24 A Two weeks.

25 Q Okay. Was this event something that you organized?

1 A No.

2 Q Who organized the event that's referenced in Exhibit R-36?

3 A Ms. Golden.

4 Q Okay. Is this a true and accurate copy of the email you
5 received as Exhibit R-36?

6 A Yes.

7 MS. LANOUEETTE: Offer Exhibit R-36.

8 JUDGE SANDRON: Any objection?

9 MS. PENDER: No objection.

10 JUDGE SANDRON: The exhibit is received.

11 **(Respondent Exhibit Number 36 Received into Evidence)**

12 Q BY MS. LANOUEETTE: Mr. Weir, I'm going to show you what's
13 been marked as Exhibit R-37. And ask if you recognize it?

14 A Yes, I do.

15 Q And what is Exhibit R-37?

16 A It is a receipt for the panic button alarm system that
17 Tara had wanted us to invest in.

18 Q Is it a true and accurate copy of the receipt for the
19 panic button?

20 A Yes.

21 MS. LANOUEETTE: Offer Exhibit R-37.

22 JUDGE SANDRON: Any objections?

23 **VOIR DIRE EXAMINATION**

24 Q BY MS. PENDER: Who ordered the panic buttons?

25 A Well, we place our orders through, I guess, our corporate

1 people, who do the purchasing. So the name on here is Yehuda
2 Lebo -- Lebo -- I can't pronounce that. I'm sorry.

3 Q That's all right.

4 MS. PENDER: No objection, Your Honor.

5 JUDGE SANDRON: Maybe just for the record, you want to
6 spell that just for the record?

7 MS. LANOUEETTE: Yes. Yehuda is Y-E-H-U-D-A. Lebovic is
8 L-E-B-O-V-I-C.

9 JUDGE SANDRON: Thank you. It says, paid by Upstate
10 Services Group. The witness has already testified about its
11 relationship with the facility.

12 So I believe there's no objection, so Respondent's Exhibit
13 37 is received.

14 **(Respondent Exhibit Number 37 Received into Evidence)**

15 **RESUMED DIRECT EXAMINATION**

16 Q BY MS. LANOUEETTE: Mr. Weir, I show you now what's been
17 marked as Respondent's Exhibit 38. And ask if you recognize
18 it?

19 A Oh, yes, I recognize that.

20 Q Okay. And what do you recognize it to be?

21 A It is the receipt for the purchase of the mirrors that Ms.
22 Golden wanted to have placed on the unit for safety.

23 Q Okay. Offer Exhibit -- is it a true and accurate copy of
24 the receipt for the mirrors?

25 A Yes.

1 MS. PENDER: No objection.

2 JUDGE SANDRON: The document is received.

3 **(Respondent Exhibit Number 38 Received into Evidence)**

4 Q BY MS. LANOUEETTE: Mr. Weir, what did you observe about
5 Ms. Golden's performance as the unit manager prior to July of
6 2019?

7 A She was struggling as a unit manager. She -- she came to
8 my office regularly, many days -- multiple days a week, with
9 different issues and concerns, looking for direction and
10 assistance. She -- there was a lot of complaints on the unit
11 from other staff. And she was just struggling to be a manager;
12 not getting a lot of the parts of the job that she needed to
13 do.

14 Q What were the complaints that you received from the staff
15 prior to July of 2019?

16 A She was -- they told me she was having meetings with
17 staff, but she wouldn't meet with everybody at once. She would
18 meet with --

19 MS. JOSLIN: Objection, Your Honor. Hearsay.

20 MS. LANOUEETTE: Your Honor, it goes to what he did and why
21 he made his decision.

22 MS. JOSLIN: Well, then we at least need to know who's
23 telling him this.

24 Your Honor, you're muted.

25 JUDGE SANDRON: To the extent that we allow it for

1 purposes of showing on what he relied, we -- we can allow it.
2 But I think we do need a better foundation for what he was
3 told.

4 Q BY MS. LANOUEETTE: Mr. Weir, do you recall who from the
5 staff on the NBI Unit came to make complaints to you?

6 A Yes, I do know. A couple of them I remember.

7 Q Who do you remember?

8 A Simon -- Simon Naccarato.

9 Q And what is his position?

10 A Program specialist.

11 JUDGE SANDRON: Do we have that spelling in the record?

12 MS. LANOUEETTE: We do.

13 JUDGE SANDRON: Okay.

14 Q BY MS. LANOUEETTE: And what did Mr. Naccarato -- when --
15 prior to July 2019, approximately when did Mr. Naccarato
16 came -- come to talk to you?

17 A I don't remember what dates they were.

18 Q Okay. What was the --

19 JUDGE SANDRON: Well, how many -- how many times -- do you
20 remember how many times he came?

21 THE WITNESS: There -- it was more than one. There was at
22 least two that I can think -- that I can think of, twice that
23 he came in to see me.

24 Q BY MS. LANOUEETTE: Okay. And what were the concerns that
25 he raised?

1 A The unit was -- how things were being handled on the unit
2 by Ms. Golden.

3 Q And did he have anything more specific that he advised you
4 of?

5 A I don't remember at this time.

6 Q And was the second complaint from him any different?

7 A I don't -- I don't recall.

8 Q Who else do you recall coming to you with complaints about
9 Ms. Golden prior to July of 2019?

10 A Prior to July, Cathleen Quinn.

11 Q And what is Ms. Quinn's position?

12 A She was a program specialist as well.

13 Q Do you remember how many times Ms. Quinn came to you --
14 complained to you prior to July of 2019?

15 A No, I don't.

16 Q What do you remember about her compliant?

17 A Again, I don't recall.

18 Q What did you do to assist Ms. Golden, if anything?

19 A I did a lot of mentoring with her and coaching her, trying
20 to help her with the management skills and how to address
21 issues and concerns on the unit.

22 Q Okay. Did her performance improve after your coaching of
23 her?

24 A No. No.

25 Q I'll show you --

1 A There might've a little improvement but nothing
2 significant.

3 Q Show you what has been marked as Exhibit R-39 -- it's
4 actually received as Exhibit R-39. And ask if you recognize
5 it?

6 A Yes, I do.

7 Q What did you do after receiving Exhibit R-39?

8 A I had made arrangements for Ms. Golden to attend a front-
9 line supervisor manager training course.

10 Q Why did you want her to attend such a course?

11 A She repeatedly told me that she was a new manager, and she
12 didn't get trained, and she was just thrown into this position.
13 So at this time when this email came out, the -- we had
14 received ArchCare. It does an education program. There's a
15 facility down the road where they do training for healthcare
16 employees. And they sent out a list of free training courses,
17 that they -- they had received a grant. And there was a
18 variety of different courses that I had different employees go
19 to. And they happened to be offering one on front-line
20 supervision and training.

21 Q Mr. Weir, I'm going to show you what's been marked as
22 Exhibit R-40. And ask if you recognize it?

23 A Yes, I do.

24 Q And what do you recognize Exhibit R-40 to be?

25 A This was an email back and forth between myself and

1 Eugenia Keating, who runs the education program at ArchCare,
2 and it was making arrangements for Tara to attend the front-
3 line supervisor manager training.

4 Q Other than Tara Golden, did you offer any other employees
5 to attend this training?

6 A This specific training, I don't know.

7 Q You don't know or is the --

8 A No, no. That specific training, no. She was the only one
9 who went that day.

10 Q Okay.

11 JUDGE SANDRON: Did you offer it to anybody else, though,
12 or just her?

13 THE WITNESS: I -- not to that -- on that specific day.
14 The courses were offered at different times. And I believe I
15 may have sent one other manager to one of the earlier
16 trainings.

17 Q BY MS. LANOUEETTE: Is that a true and accurate copy of the
18 email chain between you and Eugenia Keating --

19 MS. LANOUEETTE: And her name is spelled E-U-G-E-N-I-A.
20 Keating is K-E-A-T-I-N-G --

21 Q BY MS. LANOUEETTE: -- at ArchCare regarding the training
22 for Ms. Golden?

23 A Yes.

24 MS. LANOUEETTE: Offer Exhibit R-40.

25 JUDGE SANDRON: Any objections?

1 MS. PENDER: No objection.

2 JUDGE SANDRON: The exhibit is received.

3 **(Respondent Exhibit Number 40 Received into Evidence)**

4 Q BY MS. LANOUETTE: After Exhibit --

5 THE COURT REPORTER: Judge?

6 MS. LANOUETTE: I'm sorry. Was there --

7 THE COURT REPORTER: Judge, I'm sorry to interrupt. I'm
8 reaching the end of the -- my phone will automatically
9 disconnect after three hours, and I'm reaching the end of that.
10 So I'm going to need to disconnect and recall back in.

11 JUDGE SANDRON: Okay. How long do you think you'll need?

12 THE COURT REPORTER: Oh, just it'll take a minute or two,
13 tops.

14 JUDGE SANDRON: All right.

15 MS. JOSLIN: Your Honor, could we take a very brief
16 comfort break, as well, at this time?

17 JUDGE SANDRON: Yes, that's fine. It's -- should we come
18 back, say, in about ten minutes or so?

19 MS. PENDER: That would be great. Thank you, Your Honor.

20 JUDGE SANDRON: All right. We'll go off the record.

21 (Off the record at 3:42 p.m.)

22 JUDGE SANDRON: I think maybe we can try to finish with
23 direct examination of the witness today, if possible. And then
24 there would be a convenient break. And then start cross-
25 examination tomorrow, if that's possible. If not, we'll finish

1 the direct examination tomorrow morning, depending on how it
2 goes. So we'll just proceed to about 5:00 and see where we
3 stand.

4 Okay. Continuation of -- of direct.

5 **RESUMED DIRECT EXAMINATION**

6 Q BY MS. LANOUEETTE: Mr. Weir, when we broke, we had just
7 watched Exhibit R-40 - or looked at Exhibit R-40. After the
8 training that Ms. Golden attended, did her performance as a
9 manager improve?

10 A No.

11 Q What problems did you continue to observe?

12 A The same problems that had existed prior to her going to
13 the training.

14 Q What were those problems?

15 A There was no unity on the unit. There was a lot of
16 divisiveness on the unit. And that is related to the -- the
17 staff working together on NBI.

18 Q Show you what has been received as Exhibit 41. And ask if
19 you recognize this document?

20 A Yes.

21 Q Now, did Ms. Golden have the authority to exclude someone
22 from -- exclude a staff member from the NBI Unit?

23 A Yes.

24 Q What concerned you about Exhibit R-41?

25 A The tone of the email, who it was sent out to. It was not

1 professional to send it out to all of these employees that are
2 listed there, indicating that Ms. Palmero, you know, was not
3 able to float, to visit, to have any contact with neighbors on
4 NBI, or to even say hello. And that's in -- thus, employees on
5 the unit were not even allowed to mention to the neighbors that
6 she was working in the building.

7 Q Around -- in November of 2019, what other concerns were
8 brought to your attention regarding Ms. Golden?

9 A When we would have the meetings in the morning or the
10 afternoon with the consultants, Ms. Golden's behaviors were
11 putting us -- she would do things that we were directed not to
12 do on repeated occasions. And we -- there was a fear that --

13 Q Who --

14 A Excuse me.

15 Q Who raised the concern to you?

16 A Well, I recognized the concern when she would behave like
17 this. And then the consultants we had also identified this as
18 a concern.

19 JUDGE SANDRON: Can you be more specific?

20 MS. LANOUE: I just wanted to try to lay a better
21 foundation.

22 JUDGE SANDRON: Yes, go ahead.

23 Q BY MS. LANOUE: What exactly did you observe that
24 caused you concern?

25 A During the meetings in the afternoons, frequently, on

1 several occasions, Ms. Golden would come in and she would
2 start -- when we would have like around-the-room asking how did
3 people accept the education or the paperwork, did anyone have
4 any concerns, she on multiple occasions would start saying,
5 well, I talked to this person, they're not Union; I would talk
6 to this person, they're not Uni -- for the Union. And she
7 would be listing and identifying names of people who she said
8 were not part of the Union.

9 Q Why was that a concern to you?

10 A Because she -- we were all directed not to have those kind
11 of conversations with the employees. We could have
12 discussions, you know, with the education pieces we were doing.
13 If they had concerns or they had questions, they wanted to
14 learn more, we could share our -- our personal stories or
15 experiences with the union that we may have had. But we
16 weren't allowed to dig into it and ask more specific questions.
17 And it felt that she just kept overstepping the boundaries of
18 what we were allowed to do.

19 Q You indicated that one of the consultants raised a concern
20 to you as well. Who was that?

21 A Keith Peraino.

22 Q And what was the concern that Mr. Peraino raised to you?

23 A That it could -- that her behaviors and actions could
24 jeopardize the facility at being risk for an unfair labor
25 practice.

1 Q Did you receive any -- what did you do -- we've heard
2 testimony that Ms. Golden was suspended at one point in October
3 of 2019?

4 A Yes.

5 Q Why was she suspended?

6 A Ms. Golden was suspended because of -- at one of the
7 meetings on October 28th, she once again, after having been
8 told repeatedly that we could not do those kind of things,
9 identifying staff that -- who were part of the Union or not
10 part of the Union, that wasn't what we were ever asked to do,
11 she did it again. And she had come to one of the afternoon
12 meetings and was once again saying, well, I talked to this
13 person and they are not part of Union, and that kind of
14 behavior.

15 Q During her suspension, what, if any, investigation did you
16 or anyone else conduct?

17 A The -- I -- the consultants -- the consultants had -- we
18 had checked to see with our other managers if they had, you
19 know, heard anything about these kind of behaviors and stuff
20 like that. But no one else had actually heard her saying --
21 you know, questioning staff.

22 Q So was the concern you had that Ms. Golden was actually
23 asking staff whether they were for or against the Union?

24 A Yes.

25 MS. PENDER: Objection. I thought it was leading, but.

1 JUDGE SANDRON: Yes. I think you should --

2 Q BY MS. LANOUEETTE: And what did you specifically --

3 JUDGE SANDRON: -- (indiscernible, simultaneous speech)
4 for that.

5 Q BY MS. LANOUEETTE: You said you spoke to other unit
6 managers. What specifically did you speak about?

7 A I -- they had spoken to, like, the different department
8 heads and managers that came to meetings and asking if they had
9 heard Tara speaking to anybody.

10 Q Would -- just speaking to anybody, or was there anything
11 specific you were asking them?

12 A Specifically asking staff if they were part of the Union
13 or anything like that or were supporting the Union.

14 Q Okay. And did anyone report that they heard her do that?

15 A No.

16 Q Okay. So what did you do then?

17 A We brought Ms. Golden back to work.

18 Q And when she came back to work, who met with her?

19 A The day she came back, it was myself.

20 Q Okay. And what did you tell her when you met with her?

21 A I told her I was glad she was back, and I'm hoping that
22 she understands why she was out and that we wouldn't have any
23 more issues.

24 JUDGE SANDRON: Let me see if I just understand this. You
25 base the suspension on what she said as far as her -- what she

1 volunteered about what employees had told her about their Union
2 sentiments?

3 THE WITNESS: That she was repeatedly informed that she
4 could not be talking to the staff regarding asking them if they
5 were for or not for the Union. That wasn't the discussion.

6 JUDGE SANDRON: All right. But -- and then when you did
7 your investigation, you didn't uncover any evidence that she
8 had actually done that in your investigation and that she
9 (indiscernible, simultaneous speech) --

10 THE WITNESS: No further -- we did not uncover any further
11 information regarding that except what she had presented at
12 those meetings.

13 Q BY MS. LANOUE: After she returned from suspension, did
14 her performance as a manager improve?

15 A No.

16 Q Following her suspension, what, if anything else, did --
17 did the facility do to assist her in learning the role of a
18 manager?

19 A I know that Ms. Carolyn Carchidi actually was trying to
20 work with her as well, she had been brand new as a director of
21 nursing, but trying to open her -- her door for communication.
22 And our Mary Pat Carhart, who was a regional, I think, vice
23 president of clinical affairs for Upstate Services Group, came
24 and met with Tara.

25 MS. LANOUE: And I can't remember if it's in the

1 record. But Mary is M-A-R-Y, Pat, P-A-T, and Carhart is
2 C-A-R-H-A-R-T.

3 JUDGE SANDRON: Okay. It's better to be safe. Thank you.

4 Q BY MS. LANOUE: What -- you said Mary -- how often did
5 Mary Pat come to the facility to meet with Tara Golden that you
6 know of?

7 A Once or twice in the time frame from when she came back.

8 Q Did those efforts by Ms. Carchidi and Ms. Carhart improve
9 Ms. Golden's management skills?

10 A No.

11 Q What continued concerns did you have?

12 A The email that is still posted up here was one of them.
13 That was -- that took place after she returned.

14 Q And that's Exhibit R-41?

15 A Yes. And they're -- again, the -- the -- there was no
16 cohesiveness on the unit. There was still -- it actually kind
17 of got -- this -- this email was a big trigger for many people
18 on the unit. There were many -- Simon Naccarato and Cathleen
19 Quinn both came to my office following this email to --
20 expressing their concerns regarding how -- about this -- this
21 particular email and how -- how they felt about it.

22 Q Did you receive any additional concerns expressed to you
23 regarding Ms. Golden with respect to her conduct towards the
24 Union organizing?

25 JUDGE SANDRON: This is after -- after she came back from

1 suspension?

2 MS. LANOUEETTE: After she came back.

3 A I don't remember specifically. I just remember the
4 very -- the last day of Ms. Golden's employment.

5 Q BY MS. LANOUEETTE: Did --

6 A I don't remember.

7 Q Did Ms. Carchidi raise a concern with you about a meeting
8 she was in with Ms. Golden?

9 A I don't remember if she talked to me about that. I
10 don't -- don't know. I know that she had met with Ms. Golden,
11 but I don't know.

12 Q What happened on the last day Ms. Golden was employed?

13 A On the last day, Ms. Golden once again came into one of
14 the afternoon meetings and listed names of people; that these
15 people were not Union. That she didn't understand why we
16 thought they were Union or whatever. And that was -- it --
17 that was -- once again, everything that had happened over the
18 course of this -- the campaign and all of our education
19 training, she just was not understanding what her role as a
20 manager and what she was allowed to and not allowed to do, so.

21 Q Did Ms. Golden also bring a list of demands to a meeting?

22 JUDGE SANDRON: All right. Well, actually, you need to --
23 if you're going to lead him, you've got to exhaust his
24 recollection of a particular meeting.

25 Q BY MS. LANOUEETTE: Were you at a managers meeting with Ms.

1 Carchidi when -- where Ms. Golden was present?

2 A Yes.

3 Q In or about November of -- of 2019, after she returned
4 from her suspension?

5 A Well, yes.

6 Q Can you recall Ms. Golden raising conce (indiscernible,
7 simultaneous speech) --

8 JUDGE SANDRON: Hold on one second. Is this -- is this
9 the same day she was terminated, or are we talking about a
10 different meeting?

11 MS. LANOUEETTE: I believe this is a different meeting.
12 And I don't -- well, you know what, Your Honor, Ms. Carchidi is
13 going to testify, and I will have her address the issue. I
14 think that's probably a better course of action.

15 Q BY MS. LANOUEETTE: Who made the decision to terminate Ms.
16 Golden?

17 A I ultimately did. I had -- after -- after the incident
18 happened on the last day again, I had met with the oper -- the
19 consultant that was here, and I reached out -- we reached out
20 to Dave Camerota together and expressed the concern. And I
21 said -- and I made the comment, I said, I'm okay with doing this
22 at this time, because she just wasn't learning how to
23 transition into a management role.

24 Q Okay. Which operations -- and who from the operations
25 consultant did -- did you speak with?

1 A Keith Peraino.

2 JUDGE SANDRON: Now, maybe, you can clarify this. Is he
3 actually an employ -- is he actually an employee of Upstate, or
4 is he like a cons -- you know, firm or company with which the
5 com -- there's a contract to do, you know, management services,
6 if you know?

7 THE WITNESS: I am not aware of the rela -- how the
8 relationship -- what the relationship is. I just -- they --
9 our corporate offices, they're a consultant for us on -- for
10 our operations.

11 Q BY MS. LANOUE: Did you meet with Ms. Golden to discuss
12 her termination?

13 A Yes.

14 Q How -- how did that come about?

15 A Carolyn and I were here in the office, and I called up to
16 Tara and asked her what she was doing. She said she was
17 getting ready to leave, because it was almost the end of the
18 day. And I just said, okay, could you stop by the office on
19 your way down. And she came down here with all of her stuff to
20 leave.

21 Q And when you say, with all of her stuff, what do you mean?

22 A Like, her -- her regular bag and whatever she had brought
23 in for the day, her coat and everything.

24 Q And what -- what did you tell her?

25 A When she came in, I told her that we needed to talk to

1 her. That we didn't feel that this was a good fit anymore, she
2 did not seem to be able to make the transition to the
3 management role, and we have decided to end her employment at
4 Northeast.

5 JUDGE SANDRON: Do you recall -- do you recall if she
6 responded to you?

7 THE WITNESS: She seemed shocked. And she stood in front
8 of me as she slowly was taking keys off of her key ring and
9 just appeared -- she didn't understand why and what she was
10 doing --

11 Q BY MS. LANOUEETTE: Okay. Just --

12 JUDGE SANDRON: All right.

13 Q BY MS. LANOUEETTE: Don't characterize. Just what did she
14 say or do.

15 A Well, that's what she was saying. She didn't understand
16 why, I don't -- I use it in her tense, I don't understand why.
17 And that -- that was it. She just took her keys off, and then
18 Ms. Carchidi walked her out.

19 Q I want to show you what's been marked as Respondent's
20 Exhibit R-42. And ask if you recognize it?

21 A Yes.

22 Q What do you recognize it to be?

23 A It is the notice of termination of Tara Golden.

24 Q And who filled out the R-42 form?

25 A I did.

1 Q Is R-42 made in the ordinary course of your duties as
2 administrator of the facility?

3 A Yes.

4 Q And is it the ordinary course of your business to make and
5 keep such a document?

6 A Yes.

7 MS. LANOUILLE: Offer Exhibit R-42.

8 JUDGE SANDRON: Any objections?

9 MS. JOSLIN: Voir dire, Your Honor.

10 MS. PENDER: No objection.

11 JUDGE SANDRON: Go ahead.

12 **VOIR DIRE EXAMINATION**

13 Q BY MS. JOSLIN: Mr. Weir, did you --

14 JUDGE SANDRON: We'll start with voir dire, and then --

15 MS. JOSLIN: Yeah, this is voir dire. Yeah.

16 Q BY MS. JOSLIN: Mr. Weir, did you provide a copy of this
17 to Tara?

18 A No. This is just --

19 Q Is it -- okay. Go ahead.

20 A I'm sorry. This is -- it's the internal form that we do
21 that goes into HR so that they know to discon -- take her out
22 of the systems.

23 Q And did you provide a copy of this to HR?

24 A Yes. This is in her HR file --

25 Q Okay. So --

1 A -- at the Center.

2 Q I see. So you didn't even show it to Ms. Golden; is that
3 right?

4 A Correct.

5 Q Okay.

6 JUDGE SANDRON: Any other voir dire? Any objections to
7 the document?

8 MS. PENDER: No objection.

9 JUDGE SANDRON: Respondent's Exhibit 42 is received.

10 **(Respondent Exhibit Number 42 Received into Evidence)**

11 **RESUMED DIRECT EXAMINATION**

12 Q BY MS. LANOUEETTE: Now, Ms. Joslin raised an issue, Mr.
13 Weir, why was there no termination letter sent to Ms. Golden?

14 A That is just my mistake because their HR director had been
15 terminated previously, and I was not aware that the generalist
16 who was filling in at the time had not done that.

17 Q Mr. Weir, does Northeast Center have cameras in the
18 building?

19 A There are a few cameras, yes.

20 Q When were they installed?

21 A Before I started here.

22 Q And do you know why there are cameras in the building?

23 A It's for safety and security.

24 Q Do you know where they're located?

25 A I -- there's one at the -- in the front of the building,

1 looking at the front door; one at the rear entrance; and by the
2 loading dock area and the sides. There's two side entrances
3 that are supposed to be locked, but there are cameras by those
4 doors.

5 Q Show you what has been marked as Exhibit R-43. And ask if
6 you recognize it?

7 A Yes, I recognize that.

8 Q And what do you recognize Exhibit R-43, the first page, to
9 be?

10 A This is -- it identifies the cameras that we have that I
11 said they are and where they're located.

12 Q Do you know how Exhibit R-43 was created?

13 A It came from our -- the IT department.

14 MS. LANOUEETTE: Offer Exhibit R --

15 Q BY MS. LANOUEETTE: Is it a true and accurate copy of the
16 screenshots sent to you from the IT department?

17 A Yes.

18 MS. LANOUEETTE: Offer Exhibit R-43.

19 JUDGE SANDRON: What does that show?

20 MS. TUMINARO: I -- I have some voir dire on the document.

21 JUDGE SANDRON: Yes. And also, will the actual one that
22 goes into the actual exhibits, will it be the size that can be
23 read? Because I think it was small to begin with, and you've
24 enlarged it --

25 MS. LANOUEETTE: It -- it's very difficult for me to make

1 this any more readable.

2 JUDGE SANDRON: No, I mean, right -- I mean, right now, we
3 can see it on the screen. You've enlarged it. But when you --
4 when it's actually in the court reporter's, you know, official
5 documents, will it be as small -- you know, we have to make
6 sure it's legible and not too small. But maybe, we -- you can
7 talk that over with Mr. Baker --

8 MS. LANOUE: Okay.

9 JUDGE SANDRON: -- a little later.

10 MS. LANOUE: I will do my best.

11 THE COURT REPORTER: Can you lift up your mic a little
12 bit, Judge?

13 JUDGE SANDRON: Yes, I know we're having this problem
14 with me now. Okay. Now, you can hear me, right?

15 THE COURT REPORTER: Thank you. That's better. Yes --
16 yes, sir.

17 JUDGE SANDRON: Okay. Thanks.

18 So you have voir dire. Why don't we just go ahead with
19 that and we can see what -- what we're dealing with here.

20 **VOIR DIRE EXAMINATION**

21 Q BY MS. TUMINARO: Mr. Weir, how did you come into
22 possession of this document?

23 A I asked the -- the IT people if they could get me a list
24 of where the cameras are in the building.

25 Q And have you ever seen the footage of the cameras? Have

1 you ever seen, like, a television screen of what the cameras
2 show?

3 A I have not.

4 Q And where -- where are the -- you testified that -- that
5 there's cameras by the front door, the rear entrance, the
6 loading docks, the side door. It also looks like from this
7 document there is one from the kitchen; is that right?

8 A Yes.

9 Q And at the top, it says, eight cameras found. Do you see
10 that there?

11 A Yes.

12 Q Is it your understanding that there are eight cameras in
13 the dock -- in the building?

14 A My understanding is that there's seven. One of them does
15 not record.

16 Q But --

17 JUDGE SANDRON: Have you seen these -- have you see all of
18 these cameras yourself at one time or another?

19 THE WITNESS: I -- I -- in the hallways, like where -- not
20 the hallways, but the -- by the doorways, I can see where they
21 are in the ceiling, pointing. But I have not seen all of them.
22 And I have never seen any of the footage from any of them.

23 Q BY MS. TUMINARO: Who watches the footage?

24 A The director of maintenance has the access to -- to it.

25 Q When you say he -- he, is it a -- who is that person, the

1 director of maintenance?

2 A Well, at -- we have a new director of maintenance.

3 Before, it was John Walters at the time of the -- what we're
4 discussing. But if it's the new maintenance director, his name
5 is Guy DePietro.

6 JUDGE SANDRON: Can you spell that for us?

7 MS. TUMINARO: Guy -- yeah.

8 THE WITNESS: G-U-Y, DePietro is capital D-E, capital
9 P-I-E-T-R-O.

10 JUDGE SANDRON: And was -- was this the same -- when was
11 this actually run, this report -- or this document was
12 prepared? Fairly recently?

13 THE WITNESS: Recently, yes.

14 JUDGE SANDRON: Was -- was that the same in 2019 as it is
15 now, if you know?

16 THE WITNESS: Yes, nothing has changed.

17 Q BY MS. TUMINARO: Mr. Weir, you indicated that there's --
18 that there's only seven cameras because one doesn't record?

19 A That's what I understand when I'm reading this.

20 Q So you understand that from this document?

21 A Yes.

22 Q And are the -- on the screens that would show the images
23 captured by these cameras, are those screens kept in the
24 director of maintenance's office?

25 A Yes.

1 Q And when you say -- it looks like from this document it
2 says, motion and low res, for the first two entries. What does
3 that mean?

4 A I can't answer that. I don't know.

5 JUDGE SANDRON: I don't know if we would need somebody
6 who's more familiar with the nature of the notations. I don't
7 know if this witness really has the knowledge, you know,
8 firsthand to be able to -- so why don't -- maybe we should --

9 MS. LANOUEETTE: That's fine, Your Honor.

10 JUDGE SANDRON: -- hold it in abeyance.

11 **RESUMED DIRECT EXAMINATION**

12 Q BY MS. LANOUEETTE: Mr. Weir, could you look at what has
13 been marked Joint Exhibit 6? It's the last one. I ask if you
14 recognize Joint Exhibit 6?

15 A Yes, I do.

16 Q How did Joint Exhibit 6 come to be?

17 A I had been reporting to my direct boss, Seth Rinn, and it
18 had come out that I was getting many questions from the staff
19 about raises and were they -- was there going to be a wage
20 increase. And I shared this -- I shared that information with
21 them. And this is what the response was, to post this up to
22 let people know that they were on hold at this time.

23 MS. LANOUEETTE: I have no other questions for the witness.

24 JUDGE SANDRON: Was there a -- a history of wage increases
25 before this, like, was it one -- yearly increases or -- or not,

1 if you know?

2 THE WITNESS: Yes. When I do look back, there's been a
3 wage increase just about every year. There was one year that
4 it was postponed, like delayed a few months. But other than
5 that, there was a wage increase every year.

6 MS. TUMINARO: I'm sorry, did you indicate for which title
7 there was a wage increase or just generally? I didn't hear.

8 THE WITNESS: No, there was facility-wide increases every
9 year.

10 MS. TUMINARO: For all the titles?

11 THE WITNESS: For all titles, yes.

12 JUDGE SANDRON: So -- so there was a wage increase for
13 people that were on wages and a salary increase for salaried
14 employees? Or was it just the wage earners?

15 Q BY MS. LANOUILLE: Mr. Weir, do you know whether there
16 were increases each year?

17 A I -- okay. I can only -- based on the information that I
18 have looked at, four employees who had asked me in the past
19 if -- they said that when they had come to me and said they
20 didn't get wage increases, I had gone into those files and
21 personally looked them up; that they had got wage increases
22 every year. There was since this organ -- USG took over this
23 organization -- this facility. There was one year that it had
24 been postponed for a few months, but they did get them. And I
25 did that review.

1 JUDGE SANDRON: So -- so what was the (indiscernible,
2 simultaneous speech) --

3 Q BY MS. LANOUE: And that review -- that review was for
4 individual employees who asked you what speci -- at some later
5 time?

6 A Yes.

7 JUDGE SANDRON: But these were across-the-board wage
8 increases?

9 THE WITNESS: Yes.

10 JUDGE SANDRON: All right. Okay.

11 Well, it's now 4:25. It might be better to begin cross-
12 examination tomorrow morning. I assu -- unless --

13 I assume, Ms. Pender, you're going to have quite a few
14 questions --

15 MS. PENDER: I am.

16 JUDGE SANDRON: -- of the witness.

17 MS. PENDER: Yes.

18 JUDGE SANDRON: So I think maybe the best thing would be
19 to just start the cross tomorrow morning rather than have 40
20 minutes or so today and then have to continue it. So why don't
21 we plan on resuming then tomorrow morning at the time we've
22 been starting, which is 10 a.m.

23 So everybody have -- have a good evening. I'll see you
24 all tomorrow by Zoom at 10 a.m., Eastern. Have a good evening.

25 MS. PENDER: Thank you, Your Honor.

1 MS. JOSLIN: Thank you, Judge. You, too.

2 MS. TUMINARO: Thank you, Your Honor.

3 MS. HAMMONDS: You, too.

4 MS. PENDER: Good evening, everyone.

5 MS. HAMMONDS: Good evening.

6 THE COURT REPORTER: Bye.

7 **(Whereupon, the hearing in the above-entitled matter was**

8 **recessed at 4:24 p.m. until Wednesday, January 27, 2021 at**

9 **10:00 a.m.)**

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C E R T I F I C A T I O N

This is to certify that the attached proceedings, via Zoom Videoconference, before the National Labor Relations Board (NLRB), Region 3, in the matter of NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury and 1199 SEIU United Healthcare Workers East, Case Number 03-CA-252090, held at the National Labor Relations Board, Region 3, 11A Clinton Avenue, Albany, New York 12207, on January 26, 2021, at 9:38 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.

Thomas Baker

THOMAS BAKER
Official Reporter

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

NCRNC, LLC d/b/a Northeast	Case No.	03-CA-252090
Center for Rehabilitation and		03-CA-254186
Brain Injury,		03-CA-255155

Employer,

and

1199 SEIU United Healthcare
Workers East,

Petitioner,

and

Tara Golden, an Individual,

Petitioner.

Place: Albany, New York (Via Zoom Videoconference)

Dates: January 27, 2021

Pages: 404 through 624

Volume: 3

OFFICIAL REPORTERS

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(602) 263-0885



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

NCRNC, LLC D/B/A NORTHEAST
CENTER FOR REHABILITATION AND
BRAIN INJURY,

Employer,

and

1199 SEIU UNITED HEALTHCARE
WORKERS EAST,

Petitioner,

and

TARA GOLDEN, AN INDIVIDUAL,

Petitioner.

Case Nos. 03-CA-252090
 03-CA-254186
 03-CA-255155

The above-entitled matter came on for hearing via Zoom videoconference, pursuant to notice, before **IRA SANDRON**, Administrative Law Judge, at the National Labor Relations Board, Region 3, 11A Clinton Avenue, Albany, New York 12207, on **Wednesday, January 27, 2021, 10:03 a.m.**



1 A P P E A R A N C E S

2 **On behalf of the General Counsel:**

3 **ALICIA PENDER, ESQ.**
4 NATIONAL LABOR RELATIONS BOARD
5 11A Clinton Avenue
6 Albany, NY 12207
7 Tel. (518)816-0909
8 Fax. (518)431-4157

9 **On behalf of the Charging Party/Ms. Golden:**

10 **LISA JOSLIN, ESQ.**
11 **NANCY WILLIAMSON, ESQ.**
12 GLEASON, DUNN, WALSH & O'SHEA
13 40 Beaver Street
14 Albany, NY 12207
15 Tel. (518)432-7511
16 Fax. (518)432-5221

17 **On behalf of the Charging Party/SEIU:**

18 **AMELIA TUMINARO, ESQ.**
19 GLADSTEIN, REIF & MEGINNISS, LLP
20 39 Broadway
21 Suite 2430
22 New York, NY 10006
23 Tel. (212)228-7727
24 Fax. (212)228-7654

25 **On behalf of the Respondent/Employer:**

26 **DAWN LANOUE, ESQ.**
27 HINMAN, HOWARD & KATTELL, LLP
28 700 Security Mutual Building
29 80 Exchange Street
30 80 Exchange Street, NY 13901
31 Tel. (607)231-6917
32 Fax. (607)723-6605

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Patrick Weir		409,420 452,463 475	488	489	420,461
Sheranique Lewinson	492	495			
Cynthia Pope	501	522,530, 535			
Robin Boice	540	551,554	554		545
Heather Britton-Schrager					
	556,567	576,580	584		565
Marcos DeAbreu	591,596 610,617				596,609 616

E X H I B I T S

<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
General Counsel:		
GC-8	410	412
GC-9	413	414
GC-10	423	424
GC-11	424	425
GC-12	419	420
GC-13	425	426
GC-14	427	428
Respondent:		
R-1	464	466
R-2	466	468
R-4	439	516
R-6	440	
R-7	516	517
R-8	445	567
R-13	446	
R-15	449	450
R-17	592	593
R-18	618	
R-24	543	546
R-44	594	597
R-45	597	599

1	R-47	599	600
2	R-48	614	617
3	R-55	604	610
4	R-58	600	603
5			
6	Union:		
7	U-1	464	466
8	U-2	466	468
9	U-10	461	
10	U-11	459	464
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1 P R O C E E D I N G S

2 JUDGE SANDRON: Back on the record.

3 Cross-examination of the witness, Ms. Pender.

4 MS. PENDER: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 Q BY MS. PENDER: Good morning, Mr. Weir.

7 JUDGE SANDRON: Wait. One thing. Mr. Weir, you're still
8 under oath.

9 THE WITNESS: Yes.

10 JUDGE SANDRON: Thank you.

11 Q BY MS. PENDER: Good morning, Mr. Weir.

12 A Good morning.

13 Q I'm Alicia Pender. I'm the counsel for the General
14 Counsel here. I'm going to ask you some questions this
15 morning. If you don't understand my question or you can't hear
16 me, please let me know. I'm happy to ask it again, okay?

17 A Okay.

18 Q And Mr. Weir, you are Respondent's party representative in
19 this case, which means that you sat through the entirety of the
20 General Counsel's case earlier this week; isn't that right?

21 A Yes.

22 Q Mr. Weir, you testified that you became aware of the
23 Union's organizing campaign in July of 2019?

24 A Yes.

25 Q And you alerted your -- your direct report -- your hire-

1 up, didn't you?

2 A Yes.

3 Q Okay. I'm going to share my screen, and I'm going to show
4 you a four-page document that is labeled -- marked as General
5 Counsel Exhibit 8. Mr. Weir, can you see my screen right now?

6 A Yes.

7 Q Okay. So I'm just going to scroll through the four pages
8 of this -- of this document, okay?

9 A Okay.

10 Q For you to, kind of, get a -- get a -- get the gist of
11 what it is.

12 A A little bit slower, please.

13 Q Sure. Sorry.

14 A Okay.

15 MS. LANOUE: It might be helpful to start at the
16 bottom, which is the first email, and --

17 MS. PENDER: Yep, I'm getting there.

18 JUDGE SANDRON: Yeah, I -- I think that's probably best.

19 MS. PENDER: I just wanted to show him the -- the whole
20 thread. And this is the --

21 Q BY MS. PENDER: Okay. So this is the bottom.

22 A Okay.

23 Q This is the last page. And it goes -- this is the first
24 email.

25 A Okay. Okay.

- 1 Q Is this email -- was this email sent by you, Mr. Weir?
- 2 A Yes, it was.
- 3 Q On Friday, July 5th, 2019?
- 4 A Yes.
- 5 Q And you sent it to Seth Rinn and Dave Camerota?
- 6 A Correct.
- 7 JUDGE SANDRON: Do we have Seth Rinn in the record?
- 8 MS. PENDER: Yes, Your Honor.
- 9 JUDGE SANDRON: Very good.
- 10 Q BY MS. PENDER: And in the next email in the chain, that's
- 11 from Dave Camerota; is that right?
- 12 A Correct.
- 13 Q And it's to yourself and Seth Rinn?
- 14 A Yes.
- 15 Q Scrolling up. The next email in the chain is from you; is
- 16 that right?
- 17 A Correct.
- 18 Q On Tuesday, July 9th, 2019?
- 19 A Yes.
- 20 Q To Dave Camerota and Seth Rinn?
- 21 A Yes.
- 22 Q And the next email is from Dave Camerota --
- 23 A Yes.
- 24 Q -- on July 16th, 2019 --
- 25 A Yes.

1 Q -- to yourself and to Seth Rinn?

2 A Correct.

3 Q And then the next email, again, is -- is from you --

4 A Yes.

5 Q -- Wednesday, July 17th, 2019 --

6 A Yes.

7 Q -- to Mr. Camerota and Mr. Rinn?

8 A Yes.

9 Q And then, finally, on Wednesday, July 17th, 2019, Mr.
10 Camerota sent the final email in this thread to you and to Seth
11 Rinn; is that right?

12 A Yes.

13 Q And so you either sent or received each of these emails?

14 A Yes.

15 MS. PENDER: Your Honor, I move to admit General Counsel
16 Exhibit 8.

17 JUDGE SANDRON: Any objection?

18 MS. LANOUE: No objection.

19 JUDGE SANDRON: The document is received.

20 **(General Counsel Exhibit Number 8 Received into Evidence)**

21 Q BY MS. PENDER: I'm going to stop sharing my screen.

22 Okay. So after you alerted Mr. Camerota and Mr. Rinn to the
23 nascent reorganizing effort in the building, they ended up
24 bringing --

25 MS. PENDER: I'm sorry, Dawn, did you say something?

1 MS. LANOUE: Objection.

2 MS. PENDER: To what?

3 MS. LANOUE: Saying there about massive union
4 organizing.

5 MS. PENDER: I said nascent not massive. So I can
6 rephrase.

7 Q BY MS. PENDER: After you alerted them to what you had
8 heard a union organizing campaign in the building, they made
9 the decision to bring in operating consultants; isn't that
10 right?

11 A Yes.

12 Q And one of those consultants was Keith Peraino?

13 A Yes.

14 Q I'm going to show you a one-page document that is marked
15 as General Counsel Exhibit 9. Can you see my screen?

16 A Yes.

17 Q All right. This is, as I said, marked as General Counsel
18 Exhibit 9. It's just two emails. The bottom email, Sunday,
19 July 28th, is Dave Camerota saying Keith will be our operations
20 consultant.

21 A Okay. Yes.

22 Q And then -- and then the -- the top email is from Mr.
23 Peraino on July 28th, 2019 to Dave Camerota and copied to
24 yourself; is that right?

25 A Yes.

1 Q Who is Patrick Calli?

2 A He's another administrator in the organization that people
3 confuse the names. They get us -- because there's two
4 Patricks, so.

5 Q Okay. And who's Daniel Detor?

6 A He's another regional administrator. The equivalent of
7 Seth Rinn, in -- up in Upstate area.

8 JUDGE SANDRON: Ms. Pender, why don't you just spell -
9 they're - they're in.

10 MS. PENDER: I'll do that.

11 JUDGE SANDRON: Why don't you just spell them.

12 MS. PENDER: Yeah, I'll spell them. Patrick Calli is
13 P-A-T-R-I-C-K C-A-L-L-I. And Daniel Detor is D-A-N-I-E-L
14 D-E-T-O-R.

15 Q BY MS. PENDER: And Mr. Weir, you received this email from
16 Keith Peraino on Sunday, July 28th, 2019; is that right?

17 A Yes.

18 Q And because of formatting, when you got that, the -- the
19 below email was also included in the thread; is that right?

20 A I -- I -- yes, I guess so.

21 MS. PENDER: I move to admit General Counsel Exhibit 9.

22 JUDGE SANDRON: Any objection?

23 MS. PENDER: No objection.

24 JUDGE SANDRON: Okay. The document is received.

25 **(General Counsel Exhibit Number 9 Received into Evidence)**

1 JUDGE SANDRON: I think, Ms. Pender, as I -- as I said to
2 Ms. Lanouette yesterday, I think, before the documents are
3 actually made part of the record, you need to have them
4 properly paginated.

5 MS. PENDER: This is just a one-page document, Your Honor.

6 JUDGE SANDRON: Okay.

7 MS. PENDER: And it says 1 at the bottom. I can alter
8 that if -- if you prefer to say 1 of 1.

9 JUDGE SANDRON: Well, I think that's probably preferable,
10 if you can do that.

11 MS. PENDER: Okay.

12 JUDGE SANDRON: Because it's --

13 MS. PENDER: It's -- it's all --

14 JUDGE SANDRON: -- because then we know there's no --
15 there are no additional pages there, so.

16 MS. PENDER: Okay. I'll -- I'll do -- I'll do that. And
17 I'll -- I'll resend an upload to SharePoint.

18 JUDGE SANDRON: Thank you. And that would be helpful.

19 Q BY MS. PENDER: Mr. Peraino, after you received this
20 email -- or sorry, Mr. Weir, after you received this email from
21 Mr. Peraino, did you ever correspond with him by text message?

22 A I don't believe so.

23 Q Did you ever correspond with him using your personal email
24 address?

25 A No.

1 Q Okay. You testified that Mr. Peraino and the consultants
2 had meetings with managers and department heads, right?

3 A Yes.

4 Q Do you have in front of you still Respondent's exhibits
5 from yesterday?

6 A Yes, I do.

7 Q Can you look at Respondent Exhibit 59, the organizational
8 chart?

9 A That one I might not have here.

10 Q Okay. I'm going to share my screen and show that to you.
11 Okay. Can you see my screen?

12 A Yes.

13 Q Can you tell me, in the meetings that -- that the
14 consultants and Mr. Peraino had with department heads and unit
15 managers, did the director of the brain injury program attend
16 those meetings?

17 A Yes.

18 Q Did the director of nursing?

19 A Yes.

20 Q The assistant directors of nursing?

21 A Yes.

22 Q The RN supervisor?

23 A I don't believe so.

24 Q Unit managers?

25 A Yes.

- 1 Q LPNs?
- 2 A No.
- 3 Q CNAs?
- 4 A No.
- 5 Q Did the director of therapeutic activities attend those
- 6 meetings?
- 7 A Yes.
- 8 Q The assistant director of therapeutic activities?
- 9 A No.
- 10 Q Therapeutic activity supervisors?
- 11 A No.
- 12 Q Therapeutic activity aides?
- 13 A No.
- 14 Q What about the director of dietary?
- 15 A Yes.
- 16 Q The assistant director of dietary?
- 17 A I don't remember.
- 18 Q Dietary supervisors?
- 19 A No.
- 20 Q Dietary aides?
- 21 A No.
- 22 Q The director of rehab, did that person attend the
- 23 management meetings?
- 24 A Yes.
- 25 Q The rehab supervisors?

- 1 A No.
- 2 Q The rehab therapists?
- 3 A No.
- 4 Q The director of CSS?
- 5 A Yes.
- 6 Q Did the CSS supervisors attend those meetings?
- 7 A No.
- 8 Q The CSS employees?
- 9 A No.
- 10 Q Did anyone of the employees not on this chart attend the
- 11 meetings with the -- with Mr. Peraino and the consultants, to
- 12 your knowledge?
- 13 A The other department heads that are not listed on this
- 14 that we discussed yesterday.
- 15 Q That would be maintenance?
- 16 A Maintenance, I -- the business office, the psychology --
- 17 the director of psychology that's here, and HR -- human --
- 18 director of human resources.
- 19 Q And Mr. Peraino and the consultants also had meetings with
- 20 staff; is that right?
- 21 A Yes.
- 22 Q And department heads and unit managers were expected to
- 23 communicate to staff that those meetings were -- were
- 24 happening?
- 25 A Yes.

1 Q And I know you testified -- or maybe you didn't -- were
2 the meetings mandatory for staff?

3 A No, they were not.

4 Q Okay. And so department heads and unit managers were just
5 supposed to suggest that they attend?

6 A Yes.

7 Q And they were told, were they not, to send employees to
8 meetings on certain occasions based on the level of supposed
9 support for the union the employee demonstrated?

10 A No.

11 Q You were -- you were never told to send some employees
12 considered to be soft in their union support to the meetings?

13 A No. No.

14 Q I'm going to show you what has been marked as General
15 Counsel Exhibit 12. It is a one-page document.

16 MS. PENDER: And Your Honor, I will go back and -- and
17 mark it as 1 of 1.

18 JUDGE SANDRON: That would be fine. You can do that
19 later, though.

20 MS. PENDER: Okay.

21 JUDGE SANDRON: No problem.

22 MS. PENDER: Okay. I'm going to share my screen.

23 Q BY MS. PENDER: Mr. Weir, do you see my screen?

24 A Yes, I do.

25 Q Is this an email from Keith Peraino?

1 A Yes, it is.

2 Q Sent Thursday, October 31st, 2019?

3 A Yes.

4 Q And sent to you?

5 A Yes.

6 Q Did you receive this email?

7 A Yes.

8 Q And I'm just showing you the -- this is the bottom of the
9 page. And in this email Mr. Peraino says, "Let's do same times
10 today, including some of the soft union support"; doesn't he?

11 A Yes, that's what it said.

12 MS. PENDER: Your Honor, I move to admit General Counsel
13 Exhibit --

14 JUDGE SANDRON: Any objection?

15 MS. LANOUEETTE: Your Honor, voir dire?

16 JUDGE SANDRON: Yes. Go ahead.

17 **VOIR DIRE EXAMINATION**

18 Q BY MS. LANOUEETTE: Mr. Weir, do you know what that means;
19 soft union support in that --

20 A No, I don't.

21 MS. LANOUEETTE: No objection.

22 JUDGE SANDRON: The document is received.

23 **(General Counsel Exhibit Number 12 Received into Evidence)**

24 **RESUMED CROSS-EXAMINATION**

25 Q BY MS. PENDER: Mr. Weir, did you respond to this email to



1 ask Mr. Peraino what he meant by soft union support?

2 A No, I don't believe I did.

3 Q The meetings that Mr. Peraino and the consultants held,
4 both with managers and employees, continued after the Union
5 withdrew its petition on October 30th, 2019; isn't that right?

6 A I believe so, yes.

7 Q In fact, the manager meetings became more frequent after
8 that point, didn't they?

9 A No.

10 Q Were they held more than once a day in November of 2019?

11 A The manager meetings were always held more than once a day
12 when we had them.

13 MS. HAMMONDS: Judge, we have a person in the waiting
14 room, and it's just a phone number. I don't know if I should
15 say the phone number and someone can I identify who it is?

16 MS. PENDER: It might Tara Golden. She was having trouble
17 on her computer getting in, so I sent her the link for her
18 phone.

19 MS. HAMMONDS: Okay.

20 MS. PENDER: We can confirm that, of course.

21 MS. HAMMONDS: All right. I'll let her in right now.

22 MS. PENDER: Thank you.

23 JUDGE SANDRON: Is she on?

24 MS. HAMMONDS: Yes, she's on.

25 JUDGE SANDRON: Ms. Golden?

1 MS. GOLDEN: Yes.

2 JUDGE SANDRON: Oh, hi. We -- we just wanted to make sure
3 it was -- was you because there's no face; this is a -- this is
4 a phone. But anyway, you're welcome to continue to be on the
5 Zoom meeting.

6 MS. GOLDEN: Thank -- thank you, Your Honor. Sorry, I'm
7 having some difficulties where I live.

8 JUDGE SANDRON: No, that's all right. We understand
9 there's some -- some technical issues. I'm just going to get
10 this muted just for a phone call but I'm on.

11 Q BY MS. PENDER: Mr. Weir, you testified yesterday that one
12 thing the consultants recommended is that management be more
13 visible to employees, right?

14 A Yes.

15 Q And in order to do that, one thing you -- you did was have
16 managers come in on their -- on their nonscheduled time or on
17 weekends?

18 A Yes.

19 Q And this idea was implemented after the Union's petition
20 was withdrawn, right?

21 A Yes.

22 Q And again, after the Union's petition was withdrawn, you
23 put up an encased bulletin board by the timeclock; isn't that
24 right?

25 A No, the bulletin board has been there since before I

1 started working here.

2 Q Okay. I'm going to show you what's been marked as General
3 Counsel Exhibit 10. It is a one-page document. Can you see
4 that, Mr. Weir?

5 A Yes, I can.

6 Q This is another email from -- from Keith Peraino to
7 yourself; is that right?

8 A Yes, it is.

9 Q And it was sent Thursday, October 31st, 2019?

10 A Yes.

11 Q Do you know who the first email in the To line is in
12 reference to?

13 A No, I don't know who that is.

14 Q Do you know who Aubrey Medrano is?

15 A I -- there was one of the consultants who's was an Aubrey,
16 but I don't know her last name, so.

17 MS. PENDER: I'm going to spell that just for the record.

18 JUDGE SANDRON: Yeah.

19 MS. PENDER: It's A-U-B-R-E-Y M-E-D-R-A-N-O.

20 Q BY MS. PENDER: Mr. Weir, do you know who Juan Santana is?

21 A No, I do not.

22 MS. PENDER: That's J-U-A-N S-A-N-T-A-N-A.

23 Q BY MS. PENDER: And the last person in this email was sent
24 to was yourself, right?

25 A Yes.

1 Q And you received this email?

2 A Yes.

3 MS. PENDER: I move to admit General Counsel Exhibit 10.

4 JUDGE SANDRON: Any objection?

5 MS. LANOUE: No objection.

6 JUDGE SANDRON: The document is received.

7 **(General Counsel Exhibit Number 10 Received into Evidence)**

8 Q BY MS. PENDER: And not only did the -- did the meetings
9 with the managers and department heads continue after the Union
10 petition was withdrawn, the consultants also continued to meet
11 with employees after that time; isn't that right?

12 A Yes.

13 Q I'd like to show you what's been marked as General Counsel
14 Exhibit 11. It is a two-page document. The second page is
15 just the end of the email signature from the -- from the first
16 page, so I'll show that. This is the email. It's one single
17 email. And then it continues down onto the second page, and
18 that's all there is there. Mr. Weir, is this an email sent
19 from Keith Peraino?

20 A Yes, it is.

21 Q And again, it's sent to you?

22 A Yes.

23 Q And the date is Monday, November 11th, 2019?

24 A Yes.

25 Q Did you receive this email?

1 A Yes.

2 Q Okay.

3 MS. PENDER: Your Honor, I move to admit General Counsel
4 Exhibit 11.

5 JUDGE SANDRON: Any objection?

6 MS. LANOUE: No objection.

7 JUDGE SANDRON: General Counsel Exhibit 11 is received.

8 **(General Counsel Exhibit Number 11 Received into Evidence)**

9 MS. PENDER: Thank you.

10 Q BY MS. PENDER: There came a time, Mr. Weir, when the
11 Union filed an unfair labor practice charge against Northeast;
12 isn't that right?

13 A I believe so, yes.

14 Q And you received a copy of that charge as -- as -- in your
15 role as administrator of the facility?

16 A Yes.

17 Q And when you received it, you sent that to Mr. Rinn and
18 Mr. Camerota, right?

19 A Yes.

20 Q And the three of you had -- had some discussion about the
21 charge, didn't you?

22 A I -- yeah, I would guess so, yes.

23 Q I'm going to show you a -- again, a two-page document
24 that's marked as General Counsel Exhibit 13. Okay. Starting
25 from the bottom -- the second page is just the continuation of

1 the confidentiality notice. And then the bottom of the first
2 page is an email from you --

3 A Yes.

4 Q -- on November 25th, 2019 --

5 A Yes.

6 Q -- to Mr. Camerota and Mr. Rinn?

7 A Yes.

8 Q Sending them a copy of the ULP.

9 A Yes.

10 Q And then, the same day, at 12:05 p.m., Mr. Camerota
11 responds both to you and to Mr. Rinn; is that right?

12 A Yes.

13 Q And finally, Mr. Rinn responds the same day, Monday,
14 November 25th, 2019 to Mr. Camerota and to you; is that right?

15 A Yes.

16 MS. PENDER: Your Honor, I move to admit General Counsel
17 Exhibit 13.

18 MS. LANOUE: No objection.

19 JUDGE SANDRON: The document is received.

20 **(General Counsel Exhibit Number 13 Received into Evidence)**

21 Q BY MS. PENDER: Mr. Weir, in - did employees come to you
22 with questions about receiving raises in your time as
23 administrator of the facility?

24 A Yes.

25 Q And specifically, in December of 2019, did employees bring

1 questions about raises to you?

2 A Yes.

3 Q And you relayed those -- those questions up to Mr.
4 Camerota and Mr. Rinn, right?

5 A Yes.

6 Q All right. I'm going to show you -- I'm almost done, I
7 promise -- a -- a two-page document that's labeled General
8 Counsel Exhibit 14. Okay. Again, the second page is just your
9 email signature and the -- the protected information
10 disclaimer. The first page, at the bottom of this email is --
11 is from you; is that right?

12 A Yes.

13 Q Wednesday, December 18th, 2019 --

14 A Yeah.

15 Q -- to Mr. Camerota and Mr. Rinn, right?

16 A Yes.

17 Q And you're checking to see if there's any word on -- on
18 wage increases?

19 A Yes.

20 Q The next email is Mr. Camerota replying to your email; is
21 that right?

22 A Yes.

23 Q And he says, we're not sure we can make that move right
24 now?

25 A Correct.

1 Q And then, the final email in this thread is from Keith
2 Peraino on Wednesday, December 18th, 2019?

3 A Yes.

4 Q And he sends it to Mr. Camerota. He copies yourself and
5 Mr. Rinn, right?

6 A Yes.

7 Q And in response to your concern about employee wage
8 increases, he responds, "It might be worth posting that Kelly,
9 Kathy, and Josh filed ULPs"?

10 A That's what it says, yes.

11 MS. PENDER: Your Honor, I move to admit General Counsel
12 Exhibit 14.

13 JUDGE SANDRON: Any objection?

14 MS. LANOUE: No objection.

15 JUDGE SANDRON: The document is received.

16 **(General Counsel Exhibit Number 14 Received into Evidence)**

17 Q BY MS. PENDER: Mr. Weir, your testimony yesterday was
18 that Tara Golden was unable to transfer successfully to a
19 management position; is that correct?

20 A Yes.

21 Q When she was the NBI unit manager, Ms. Golden made
22 suggestions for how to improve the unit, didn't she?

23 A Yes, she made suggestions.

24 Q For example, she suggested implementing -- she suggested
25 purchasing mirrors and a panic button to improve staff safety?

1 A Yes, that had all been done prior to me arriving.

2 Q Right. And it -- and it was -- her suggestions were
3 followed?

4 A That's -- yes.

5 Q If you know -- because I know you said it was before your
6 time -- did Ms. Golden have a company credit card?

7 A Not that I know.

8 Q So she didn't -- that's why she didn't place those orders
9 herself?

10 A Correct.

11 Q And she, at one point, had a staff appreciation day for
12 NBI; is that right?

13 A Yes.

14 Q And she paid for that out of her own pocket as well,
15 right?

16 A I don't know how that was paid for.

17 Q Did any other unit managers or department heads have staff
18 appreciation days, to your knowledge?

19 A Unit managers, not that I know of. Different department
20 heads do different things for their departments though.

21 Q And Ms. Golden willingly went to trainings to improve her
22 performance, right?

23 A Yes.

24 Q And she asked for help when she felt she needed it?

25 A Yes.

1 Q And you never disciplined Ms. Golden for anything she
2 failed to do as a supervisor, did you?

3 A No.

4 Q And you never disciplined her for anything she did as a
5 supervisor, right?

6 A No.

7 Q And you didn't choose to simply demote her --

8 JUDGE SANDRON: Hold on. Wait one second. You know, if
9 you can't -- it can be a little bit ambiguous because you said
10 right and he said no. I'm sorry, just --

11 Q BY MS. PENDER: Did you ever discipline Ms. Golden for
12 anything she did as a supervisor?

13 A No.

14 Q Did you choose to demote her back to her former position?

15 A No.

16 Q You chose to terminate her instead?

17 A Yes.

18 Q You testified yesterday that after Ms. Golden sent the
19 email about employee, Melanie Palmero, two program specialists
20 came to you with concerns about that email?

21 A Yes.

22 Q And you had concerns yourself?

23 A Yes.

24 Q But you didn't relay those concerns to Ms. Golden, did
25 you?

1 A I did have a conversation with her after -- afterward
2 about that.

3 Q Did you tell her she was in jeopardy of losing her job?

4 A No, I did not.

5 Q The day Ms. Golden returned from her suspension, October
6 31st, you had a conversation with her that day, right?

7 A When she came in to get her badge and things, yes.

8 Q You told her you were glad she was back?

9 A I did say that.

10 Q And you told her that you had worried she would be so
11 angry that she would have quit?

12 A I do not recall that.

13 Q And you told her she had been suspended because her name
14 came up with regard to the text messages that were sent to CSS
15 during that meeting?

16 A No, I don't recall that either.

17 Q You told Ms. Golden that you had confidence in her?

18 A I had -- not just -- I can't leave it at that. That
19 doesn't -- it doesn't -- claim -- right -- that I said I had
20 confidence that she was taking the -- the opportunities to
21 learn things.

22 Q And that she had potential?

23 A She -- yes.

24 Q And that she was trying hard to do things on NBI?

25 A Yes.

1 Q And become a better manager?

2 A Yes.

3 Q And that she was an integral part of the facility?

4 A I don't recall that part.

5 Q And you told her the staff was saying good things about
6 her too, right?

7 A I don't recall that either.

8 Q And you told her that she was doing a really good job?

9 A I do not believe I said that to her.

10 Q Okay. Mr. Weir, I'd like to play you a recording that I
11 hope can refresh your recollection of that conversation you had
12 with Ms. Golden on the 31st of October.

13 MS. LANOUE: Objection, Your Honor. I haven't heard
14 this recording or been provided a copy of it.

15 JUDGE SANDRON: Do we have a transcript of the recording?

16 MS. PENDER: I'm sorry, Judge. Can you repeat that?

17 JUDGE SANDRON: Oh. Do we have a transcript of the
18 recording?

19 MS. PENDER: I do. I do.

20 JUDGE SANDRON: Okay. So what --

21 MS. PENDER: I can --

22 JUDGE SANDRON: Well --

23 MS. PENDER: I -- what I can -- go ahead. Sorry.

24 JUDGE SANDRON: Well, why don't you go ahead and play it.
25 I mean, if you're talking about refreshing him at this point,

1 it's not necessarily going to be an -- an exhibit. So you
2 can -- you can play it, as long as we make sure that Mr.
3 Baker -- I mean, I don't know how you want to handle that. Do
4 you want to do it -

5 I guess, Mr. Baker, you don't -- wouldn't have a problem
6 with getting the recording from a recording, would you?

7 THE COURT REPORTER: No. As long as it's played at a
8 decent volume, no. It should be fine.

9 JUDGE SANDRON: Okay. Why -- why don't we have it played?
10 And this is for refreshment at this point.

11 MS. PENDER: That's right. This is for refreshment.

12 JUDGE SANDRON: Okay. Do you have -- do we have the
13 recording?

14 MS. PENDER: I'm sorry, Your Honor?

15 JUDGE SANDRON: Do -- do we have it to play?

16 MS. PENDER: It was playing. Could you not --

17 JUDGE SANDRON: No, I --

18 MS. PENDER: -- not hear it?

19 JUDGE SANDRON: No.

20 THE WITNESS: I couldn't hear anything.

21 MS. HAMMONDS: Alicia --

22 MS. PENDER: Yes?

23 MS. HAMMONDS: -- you need to -- when you go to share
24 something that has audio, sometimes you need to click a box
25 that says, "share audio".

1 MS. PENDER: In the -- in the -- in the Zoom?

2 MS. HAMMONDS: Yeah. Like, when you're sharing screen,
3 there's usually at the bottom left it says, "share computer
4 sound".

5 MS. PENDER: Interesting. I see. Okay. Let me try this
6 again.

7 JUDGE SANDRON: Okay. I haven't seen -- had that either,
8 so.

9 MS. PENDER: Okay. Sorry I didn't realize that it --

10 JUDGE SANDRON: That's all right.

11 MS. PENDER: -- wasn't playing for everybody. Okay. I'm
12 going to -- I'm going to play it again. And you can see at the
13 bottom of the screen it says, 24 minutes. I'm not going to
14 play the entire 24 minutes. I'm happy to send this if people
15 want it, but I'm just going to play the first five minutes or
16 so. We don't need to hear the whole thing.

17 JUDGE SANDRON: All right.

18 MS. PENDER: All right. Tell me if this works.

19 (Audio played at 10:36 a.m., ending at 10:41 a.m.)

20 MS. PENDER: I'm going to stop. I'm going to stop there.

21 JUDGE SANDRON: Okay. Yeah. Were you able to hear
22 that -- this is not being offered as evidence at this point,
23 it's just for refreshment. Were you able to hear -- to it --

24 THE WITNESS: Yes.

25 JUDGE SANDRON: -- accurately?

1 THE WITNESS: Yes, I was.

2 JUDGE SANDRON: All right. Then we can go ahead with
3 questions about refreshment.

4 Q BY MS. PENDER: Mr. Weir, does listening to that recording
5 refresh your recollection of the conversation you had with Ms.
6 Golden on October 31st, 2019?

7 A Well, what I heard, yes, so.

8 Q And so in that conversation, you told her you were glad
9 she was back, right?

10 A Yeah. I never -- never denied that, yeah.

11 Q That's right. And that you -- you had worried she was --
12 she would be so angry that she would quit?

13 A That's what -- apparently what I said, yep.

14 Q And that she was suspended because her name came up with
15 regard to the text messages sent to CSS?

16 A Yes.

17 Q Because she was friends with people in the building who
18 had gotten the message?

19 A Yes. Part of it, yes.

20 Q And you told her that consultants were professionals and
21 they did this for a living?

22 A Yes.

23 Q And so even though you and Mary Pat didn't think there was
24 anything there, she had to be suspended pending an
25 investigation?

1 A Yes.

2 Q And you told Ms. Golden that you had confidence in her?

3 A I did.

4 Q And that she had potential?

5 A Yes.

6 Q And that she was trying hard to do things on NBI?

7 A Yes.

8 Q And she was an integral part of the facility?

9 A Yes.

10 Q And that the staff was saying good things about her too?

11 A The staff on NBI, yes.

12 Q And that she was doing -- doing really well or doing a
13 really good job?

14 A Yes.

15 Q I'm going to -- I'm going to ask you now some questions
16 about -- about Cathy Todd. You interviewed Ms. Todd over the
17 phone on November 13th, 2019, right?

18 A Yes.

19 JUDGE SANDRON: I think just one -- one thing before we go
20 on. I think we're -- the recording is not going into the
21 record, but I think we put on -- when -- who recorded that just
22 so it's on the record.

23 MS. PENDER: Oh, yes. The --

24 JUDGE SANDRON: I'm assuming Ms. Golden?

25 MS. PENDER: Yes. The recording was made by Ms. Golden.

1 JUDGE SANDRON: All right. That -- that's fine.

2 Q BY MS. PENDER: So after you had that phone conversation
3 with Ms. Todd on November 13th, 2019, you didn't have any
4 follow-up interview with her, right?

5 A No.

6 Q The next time you talked to her was on November 19th,
7 2019?

8 A Yes.

9 Q And at that point, the decision had already been made to
10 terminate her employment?

11 A Ye -- well, yes. We had already got her statement.

12 Q But in the November 13th conversation, you didn't confront
13 her about the supposed medication errors she had made, right?

14 A At that time, no, I did not.

15 Q Because you hadn't been made aware of those at that time?

16 A Correct.

17 Q And so you didn't confront her about those prior to
18 terminating her?

19 A Correct.

20 Q Did you rely on those -- on those supposed errors in
21 deciding to terminate her?

22 A That was part of the decision-making factor, yes.

23 Q I'd like to show you what you were shown yesterday as
24 Respondent Exhibit 1. Do you have that in front of you?

25 A Yes.

1 Q I'm going to -- oops.

2 MS. PENDER: Ms. Hammonds, would you be able to share that
3 on the screen?

4 MS. HAMMONDS: Yeah.

5 MS. PENDER: Thank you.

6 JUDGE SANDRON: Those tabs are quite helpful.

7 Q BY MS. PENDER: Okay. Mr. Weird, do you have Respondent 1
8 in front of you?

9 A Yes, I do.

10 Q Did you rely on this document in making the decision to
11 terminate Ms. Todd?

12 A This is just the document that initiated the
13 investigation.

14 Q And it was part of the investigation?

15 A Yes.

16 Q The investigation that led to Ms. Todd being discharged?

17 A Yes.

18 Q You personally didn't talk to the CNA who gave this
19 statement, right?

20 A Not when she gave the statement, no.

21 Q Did you talk to her at any point?

22 A I -- I -- I did. I don't recall when.

23 Q Did you ask her about this statement?

24 A I don't recall.

25 Q Did you ask her what she meant when she said, "Cathy is

1 talking about what goes on in the workplace"?

2 A No, I don't -- I don't recall.

3 Q I'm going to ask you to now look at Respondent Exhibit 4.

4 A Yeah.

5 Q Do you have that in front of you, Mr. Weir?

6 A I do.

7 Q And did you -- did you rely on -- on -- did this
8 document -- did you rely in part on this document in deciding
9 to terminate Ms. Todd's employment?

10 A Again, it was just another document collected during the
11 investigation process.

12 Q And it --

13 A That was all.

14 Q Okay. So this document makes up part of the investigation
15 file?

16 A Yes.

17 Q And as -- after your review of that file, you determined
18 to discharge Ms. Todd?

19 A Yes.

20 Q Did you direct Ms. Pope to write this statement?

21 A No, I did not.

22 Q I'm looking at the first paragraph in this statement. To
23 your knowledge -- and if you don't know, that's fine -- was Ms.
24 Todd ever issued a discipline in response to the -- the October
25 2019 incident Ms. -- Ms. Pope talked about here?

1 A From what I remember reading and hearing from Ms. Pope,
2 and I believe Ms. Candee, that they never -- that I think they
3 were trying to give her one, but they never even got to do
4 that --

5 Q And they didn't --

6 A -- after -- so no.

7 Q So nothing was put in -- in Ms. Todd's file?

8 A I don't recall.

9 Q If you look at the last paragraph of this -- of this
10 statement where it talks about CNA Kristina. Toward the end it
11 says, "CSS took her tray away because she was making a mess".
12 To your knowledge, was the CSS worker who took the neighbor's
13 tray away disciplined for doing that?

14 A I don't know.

15 Q What is Kristina Plonski's current job title?

16 A Staffing coordinator.

17 Q Do you know when she was appointed to that position?

18 A Sometime in December of 2019.

19 Q I'm going to ask you now to look at Respondent Exhibit 6.
20 And these are the neighbor interviews that the social work --
21 that you instructed the social work department to -- to
22 undertake; is that right?

23 A Yes.

24 Q And these documents also make up part of the investigation
25 file that you relied on in determining that Cathy Todd needed

1 to be discharged?

2 A Yes.

3 Q Okay. I'm going to ask you to look at page 3 of 72. And
4 just let me know when you -- when you get there. I'm going to
5 ask you to look at the bottom of that page.

6 A Yes, I'm here.

7 Q Okay. Where it says in response to the question, "Have
8 staff ever yelled or been rude to you?" It says, "One CSS
9 person yesterday, reddish hair, she said something rude to me."

10 To your knowledge, was that CSS person disciplined as a --

11 A I am not.

12 Q -- result of this complaint?

13 A I don't know.

14 Q When you were reviewing these complaints or these -- these
15 statements, did you -- did you ask any questions about how they
16 came to be made?

17 A I'm sorry? I don't --

18 Q You don't understand. Do you see off to the side kind
19 of -- you have to tilt your head, it says --

20 A Yes.

21 Q -- "Cathy Todd yells at me"?

22 A Yes.

23 Q Do you know why that seems to be in different handwriting
24 than the rest of the words on this document?

25 A No, I do not.

1 Q All right. I'm going to ask you to look at page 12 of 72.

2 MS. PENDER: And thank you, Ms. Hammonds, for your help.

3 Q BY MS. PENDER: Okay. Down there at the bottom -- are you
4 there, Mr. Weir, at page 12 --

5 A Yes.

6 Q -- of 72?

7 A Yes.

8 Q Okay. Where it says, "Cindy Pope randomly switched
9 roommates without consulting people, feels like they play
10 Russian roulette with neighbors".

11 A Yes.

12 Q Was Ms. Pope disciplined as a result of this complaint?

13 A No.

14 Q All right. I'm going to have you go down to page 29 of
15 72. Okay. In response to question 4 where -- where the
16 neighbor is asked, "Would you say that staff treats you like an
17 individual," and their response is, "Cindy Pope treats me like
18 individual asshole", was Ms. Pope disciplined as a result of
19 this neighbor complaint?

20 A I -- I don't recall, you know, but I don't think so.

21 Q And down at the bottom under response to question 6, "Have
22 staff ever yelled or been rude to you?" It says, "Yeah,
23 Cindy". Was Ms. Pope disciplined as a result of that
24 complaint?

25 A No.

1 Q And if you go to the next page in response to question 8,
2 "Do you feel the staff provides you the same care that they
3 provide to other neighbors on the unit?" It says, "No, Cindy
4 favors". Was Ms. Pope disciplined as a result of that
5 complaint?

6 A No.

7 MS. LANOUE: What page is that?

8 MS. PENDER: This is page 30 of 72.

9 Q BY MS. PENDER: And I'll have you go to the next page, 31
10 of 72, toward the bottom where it says, "Have staff ever yelled
11 or been rude to you?" And it says, "Yes, Judy. I've
12 complained about it, but it's" -- and I -- I can't read the
13 last two words.

14 A Better now.

15 Q Better now, that's what I thought, okay. Was Judy ever
16 disciplined as a result of this complaint?

17 A No.

18 Q And I'd ask --

19 JUDGE SANDRON: Do you know --

20 MS. PENDER: Sorry.

21 JUDGE SANDRON: Do you know Judy's last name, by any
22 chance?

23 THE WITNESS: I believe it's Roebuck, R-O-E-B-U-C-K.

24 JUDGE SANDRON: Thank you.

25 MS. PENDER: And Judy was J-U-D-Y.

1 JUDGE SANDRON: Yes. Thank you. It could be a J --
2 J-U-D-I sometimes.

3 MS. PENDER: Yeah.

4 JUDGE SANDRON: Better not to assume.

5 Q BY MS. PENDER: And then I'll have you go down, I think,
6 another page to page 33 of 72. Under question 6, "Have staff
7 ever yelled or been rude to you?" The response is, "Just
8 Katie, that's about it". Do you know what Katie this was
9 referring to?

10 A No, I do not.

11 Q Do you know if anyone was disciplined as a result of this?

12 A No, I do not.

13 MR. PENDER: And it's K-A-T-I-E.

14 Q BY MR. PENDER: And then finally, I'd ask you to go all
15 the way down to page 67 of 72. There we go. On -- on question
16 1 it says, "When staff enters your room, what do they say or
17 do?" And the response is that "The male nurse says, What a
18 fucking mess". Was the male nurse --

19 MR. PENDER: I'm sorry, Dawn, I can't hear you.

20 JUDGE SANDRON: I think you have it on mute. Okay.

21 MS. LANOUE: What page is this?

22 MS. PENDER: This is 67 of 72.

23 Q BY MS. PENDER: Mr. Weir, to your knowledge, was the male
24 nurse disciplined as a result of that?

25 A No.

1 Q You don't know who it is?

2 A I don't have any idea who that is.

3 Q Is there a male nurse on that unit?

4 A No.

5 Q Okay. I'm going to now have you look at Respondent
6 Exhibit 8. And this is a March 5th, 2018 statement written by,
7 I believe, Cindy Pope. And the second page is a statement from
8 social worker Heather Britton-Schrager -- whose spelling is
9 already in the record. And then the third page is some social
10 work progress notes. Do you have that in front of you, Mr.
11 Weir?

12 A Yes.

13 Q Did these documents also make up part of the investigation
14 file you relied on in deciding to discharge Ms. Todd?

15 A Yes.

16 Q When did you become aware that these documents existed?

17 A These documents were provided to me by Cindy Pope and
18 Heather Britton-Schrager during the week that we were doing the
19 investigation.

20 Q Was -- were -- were these documents provided to you before
21 or after your November 13th conversation with Ms. Todd?

22 A Oh, after.

23 Q And to your knowledge -- looking at the first page of this
24 document, to your knowledge, was Ms. Todd disciplined as a
25 result of this statement?

- 1 A No.
- 2 Q And looking at --
- 3 A Not that I recall.
- 4 Q And at -- at the second page, do you know if Ms. Todd was
- 5 disciplined as a result of this statement?
- 6 A Not to my knowledge.
- 7 Q And then the third page -- maybe you can point it out to
- 8 me, because I don't see it. Does this page even reference Ms.
- 9 Todd by name?
- 10 A No, it does not in the actual progress note.
- 11 Q Do you know if Ms. Todd was disciplined as a result of
- 12 this -- this statement?
- 13 A No.
- 14 Q No, you don't or no, she wasn't?
- 15 A I -- I -- no, she wasn't.
- 16 Q Thank you. And finally, Mr. Weir, I'm going to have you
- 17 look at Respondent Exhibit 13, which is the termination -- the
- 18 internal termination page for Cathy Todd.
- 19 A Yes.
- 20 Q You've got that in front of you?
- 21 A Yes.
- 22 Q Thank you. Okay. And so where it says, "Reason given,
- 23 explain reason given", it says, "Inappropriate behavior in
- 24 resident areas. See investigation in file." You didn't
- 25 write -- you didn't reference the medication errors in -- on

1 this document?

2 A No, I guess -- not specifically.

3 Q And you didn't specify any abuse or neglect of neighbors?

4 A No.

5 Q Okay.

6 MS. PENDER: Thank you, Ms. Hammonds. I'm done -- I'm
7 done with these exhibits.

8 Q BY MS. PENDER: Mr. Weir, are you required -- are you a
9 mandated reporter of patient abuse or neglect?

10 A Yes.

11 Q So if something rises to the level of -- of being neglect
12 of a patient, you're mandated to report it?

13 A Yes.

14 Q And if something rises to the level of abuse of a patient,
15 you're mandated to report it?

16 A Yes.

17 Q So it's safe to say that if you didn't report such a
18 thing, they didn't rise to the level of being reportable?

19 A Yes.

20 JUDGE SANDRON: And just so we have it clarified, to whom
21 would you make such a report?

22 THE WITNESS: The department -- New York State Department
23 of Health.

24 Q BY MS. PENDER: What entity, if you know, controls LPN
25 licensing?

1 A I -- I'm not exactly sure. It's -- I mean, it's within
2 the Department of Health, I believe, but Office of Professions.

3 Q Could it be within the Department of Education?

4 A Could be, yes.

5 JUDGE SANDRON: Oh, if -- well, do you know? I mean, we
6 don't -- you don't need to speculate.

7 THE WITNESS: I am not exactly positive, no.

8 Q BY MS. PENDER: Mr. Weir, in your testimony yesterday you
9 said that the RN supervisor responds to all codes, is that --
10 that's right?

11 A Yes, supposed to.

12 Q They're supposed to. Is that the case both during the day
13 and at night?

14 A Yes.

15 Q So if there's a code on the overnight shift, the RN
16 supervisor is always supposed to respond to it?

17 A Correct.

18 Q Because they're the one that's qualified to do any
19 assessment?

20 A Yes.

21 Q Mr. Weir, you were subpoenaed by the General Counsel in
22 this matter as the custodian of records; is that right?

23 A I believe so, yes.

24 Q And you assisted counsel in preparing Northeast's response
25 to the General Counsel subpoena?

- 1 A Yes.
- 2 Q I'm going to show you a document that is responsive to
3 that subpoena. It's marked as General Counsel Exhibit 15, and
4 it's a two-page document. Can you see my screen?
- 5 A Yes, I can.
- 6 Q Okay. I'm going to scroll to the bottom. This is the
7 last page of the two-page document. So the first is an email
8 from Mr. Peraino --
- 9 A Okay. Yes.
- 10 Q -- November 11th, 2019, to Seth Rinn and Dave Camerota.
- 11 A Yes.
- 12 Q The subject is Josh in CSS.
- 13 A Yes.
- 14 Q And then above is Mr. Rinn's response.
- 15 A Okay. Yes.
- 16 Q Another email from Mr. Peraino, November 11th, 2019, 11:48
17 a.m. to Mr. Rinn, Mr. Camerota.
- 18 A Yes.
- 19 Q And finally, Mr. Camerota responds Monday, November 11th,
20 2019 to Mr. Peraino and to Mr. Rinn.
- 21 A Yes.
- 22 Q Is this a document that -- that you -- that was produced
23 in response to the General Counsel's subpoena?
- 24 A I -- not that I'm -- I'm not aware of. I don't know.
- 25 Q Well, you testified that you helped prepare the response

1 to the subpoena.

2 A Yes, but I don't remember everything that we prepared.

3 Q Okay.

4 MS. PENDER: Your Honor, I'm going to move to admit
5 General Counsel Exhibit 15.

6 JUDGE SANDRON: Any objection?

7 MS. LANOUE: No objection.

8 JUDGE SANDRON: The document is received.

9 **(Respondent Exhibit Number 15 Received into Evidence)**

10 MS. PENDER: Thank you. I'm going to stop sharing my
11 screen. Your Honor, can I take just two minutes to just make
12 sure I've covered all my bases?

13 JUDGE SANDRON: Yes. Do you want to just go off the
14 record or --

15 MS. PENDER: No. That's fine.

16 JUDGE SANDRON: (Indiscernible, simultaneous speaking).

17 MS. PENDER: I'm just going to -- I'm just going to be
18 silent for a second.

19 JUDGE SANDRON: All right. That's fine. We can -- we can
20 just stay on and mute for a couple of minutes. When you're
21 ready, we'll come back on.

22 MS. PENDER: Thank you. I'm ready.

23 JUDGE SANDRON: Okay. Everybody's --

24 MS. PENDER: Everybody's back?

25 JUDGE SANDRON: Yes.

1 MS. PENDER: Okay. I have nothing further at this time,
2 Your Honor.

3 JUDGE SANDRON: Any cross-examination, Ms. Tuminaro?

4 MS. TUMINARO: Yes, I do have some, Your Honor. I wonder
5 whether the witness, Mr. Weir, ever submitted a statement in
6 connection with the investigation. And if so, I'd call for the
7 Jencks statement.

8 MS. PENDER: Yes, I do have one that I will email.

9 MS. TUMINARO: And how many pages is it?

10 MS. PENDER: It is seven pages in total.

11 JUDGE SANDRON: And the date on the affidavit?

12 MS. PENDER: It's signed on December 17th, 2019.

13 JUDGE SANDRON: So you're going to send it by email.

14 We can go off the record just for a few minutes while Ms.
15 Tuminaro has an opportunity to review it.

16 MS. TUMINARO: Thank you, Your Honor. Just maybe 15
17 minutes or so.

18 JUDGE SANDRON: All right. We'll -- it's now -- we'll --
19 we'll just come back at 11:20. I think that would be -- I
20 think we're about 11:06. Maybe come back at 11:20. So we'll
21 go off the record till then.

22 MS. TUMINARO: Thank you.

23 (Off the record at 11:06 a.m.)

24 JUDGE SANDRON: Okay. I think we're ready to go back on
25 the record.

1 Ms. Tuminaro, ready for cross-examination?

2 MS. TUMINARO: Yes, Your Honor.

3 **CROSS-EXAMINATION**

4 Q BY MS. TUMINARO: Mr. Weir, by July of 2019, there was a
5 staffing crisis at Northeast, correct?

6 A There was staffing issues, yes.

7 Q Well, it had been ris -- many staff believed it had risen
8 to the level of a crisis, isn't that true?

9 MS. LANOUILLE: Objection, Your Honor, to the term crisis.

10 JUDGE SANDRON: Well, maybe you can -- well, it is cross-
11 examination, so I'll allow it.

12 A Well, there was a staffing -- there were staffing issues
13 that had been here for a while.

14 Q BY MS. TUMINARO: You had used the term "crisis" to refer
15 to the staffing situation, hadn't you, Mr. Weir?

16 A I -- maybe, I don't know for sure but maybe.

17 JUDGE SANDRON: Well, are you saying at the time, that --
18 at the time or during his testimony?

19 Q BY MS. TUMINARO: In July of 2019, you used that term to
20 refer to the staffing situation in your correspondence with
21 corporate, Dave Camerota and Seth Rinn, correct?

22 MS. LANOUILLE: Objection. If we're going to talk about
23 correspondence, it should be shown to the witness.

24 MS. TUMINARO: Well, I'm exploring his recollection right
25 now. He said he didn't use the word crisis, so I'm just seeing

1 what his recollection is.

2 JUDGE SANDRON: All right. He --

3 MS. LANOUE: No, he said he didn't recall if he used
4 the word crisis.

5 JUDGE SANDRON: Well, I mean, if you -- you can ask him if
6 he recalls any correspondence where he used the term "crisis".

7 MS. TUMINARO: Okay. I will -- I will show him
8 correspondence shortly.

9 Q BY MS. TUMINARO: Mr. Weir, in July of 2019, there were 59
10 vacancies at Northeast; isn't that right?

11 A I -- I don't know exactly how many vacancies there were in
12 which departments.

13 Q Well, there were 43 CNA vacancies in July of 2019,
14 correct?

15 A I -- again, I don't know the exact numbers. I do know
16 that some of the ways they had calculated them were incorrect,
17 so I don't know if it was that -- those were the exact numbers
18 or not.

19 Q You had advocated to Northeast's parent corporation that
20 there was a need to raise the rates for employees at Northeast,
21 hadn't you, in July of 2019?

22 A I did push to try to get rates increased.

23 Q And you also compiled an analysis of other nursing home
24 rates at -- in -- at facilities in the region, correct?

25 A That's --

1 MS. LANOUE: Objection. Rates for what?

2 Q BY MS. TUMINARO: Staffing -- nursing home staff wage
3 rates in the region.

4 A We were able to get a couple of them, what we -- we
5 estimate was, you know, close to what they -- the nurses, LPNs,
6 and CNAs.

7 Q And according to your analysis, you conveyed to corporate
8 that Northeast was paying less than other facilities in the
9 region; is that right?

10 A I -- we were paying less --

11 MS. LANOUE: Objection. Paying less for what?

12 Q BY MS. TUMINARO: Wages rates for nursing --

13 MS. LANOUE: For who?

14 Q BY MS. TUMINARO: -- home positions.

15 MS. LANOUE: For everyone?

16 Q BY MS. TUMINARO: For -- for CNAs and LPNs.

17 A We were paying less than some of the facilities. I don't
18 believe we were at the bot -- lowest in the area, though.

19 Q And as of July of 2019, the workers in CSS hadn't had any
20 raises in nine years, except to correct for when the minimum
21 wage eclipsed the base rates, correct?

22 A I have -- don't have any idea about that.

23 Q And since 2010, the CNAs and LPNs had only gotten raises
24 in 2016, correct?

25 A Not that I know of.

1 Q In July of 2019, nurse managers, ADONs, and staffing
2 coordinators told you in a meeting that employees were
3 interested in unionizing due to the staffing crisis at
4 Northeast, correct?

5 A I don't recall that.

6 Q You don't recall that meeting?

7 A I -- yes.

8 Q And do you recall whether you also learned in July of 2019
9 that staff were beginning to refuse to pick up additional
10 shifts?

11 A That's -- that I did hear.

12 Q And where did you hear that?

13 A I -- I don't recall if it -- I don't recall where I heard
14 that.

15 Q Did you also hear that the long-term aides were saying
16 that the staffing shortages were causing them to gl -- neglect
17 their neighbors because they couldn't care for them or give
18 them showers?

19 A Yes.

20 Q You heard that?

21 A I heard that.

22 Q And do you recall managers in July of 2019 telling you
23 that staff were voicing concerns that the rates were so far
24 below other facilities that retention was a problem?

25 A That sounds familiar to me.

1 Q And staff, in July of 2019, approached you to ask for
2 bonuses for working so short on a daily basis, correct?

3 A That I don't re -- I don't recall when that happened.

4 Q And do you recall that in July of 2019, you learned that
5 long-term staff were thinking of leaving because they hadn't
6 gotten a raise in so long?

7 A Again, I don't recall that. They could have but I don't
8 recall.

9 Q Do you recall that the issues that kept coming up among
10 the staff in July of 2019 were wage rates, health insurance,
11 and staffing levels?

12 A Those are issues that I heard about, yes.

13 Q What are EAC (sic passim) meetings?

14 A There's -- I think it's supposed to be EEC meetings,
15 employee engagement committee meetings.

16 Q And what are those?

17 A Those are meetings that I would hold with employees, line
18 staff from any department that wanted to come and share
19 concerns and try to help figure out solutions, like working as
20 a working group together with me.

21 Q And so did you hold them with CNAs?

22 A Yes, there are CNAs that attend.

23 Q And did you hold them with people from CSS?

24 A They were held -- it was a -- it was a meeting that was
25 held that they were all invited to -- people were invited to.

1 It was a smaller group, trying to keep representatives from
2 every department to try to vet -- that they would go back and
3 solicit ideas and then bring back responses, so.

4 Q Was there a designated person from each department or
5 anyone could come who wanted to?

6 A Nope. No, they -- anyone could come. Some days, some of
7 the meetings were very full; others were just a few
8 representatives that would show up and come in.

9 Q And how often were they held?

10 A I initially started them -- they were doing them, I think,
11 either once a week or once every two weeks at the beginning.

12 Q When -- what was the beginning? When did that start?

13 A I don't remember exactly when they started.

14 Q Was it in response to the Union campaign?

15 A It was one of the things that came up that -- when the
16 consultants were here and we were doing evaluations, but it was
17 something that our organization had put out there for us that
18 we were supposed to be doing. I had not been aware of it, and
19 as soon as they told me, I got them going.

20 Q And as a result of the EAC (sic passim) meetings, you
21 heard from employees that there should be differentials for
22 people in CSS and NBI, correct?

23 A I -- could be. I'm not sure if that came up in a meeting
24 there.

25 Q Well, you made that recommendation that there should be

1 differentials for CSS and NBI to corporate, correct?

2 A I believe, yes. I think I did.

3 Q And you also recommended improving tuition reimbursement
4 or making a tuition reimbursement program at Northeast,
5 correct?

6 A The -- actually the Upstate Services group has a tuition
7 reimbursement program that had not been rolled out at this
8 facility -- or people were not aware of it, so it was re-
9 rolling it out.

10 Q And that was your recommendation to improve the benefit
11 package for employees at Northeast, correct?

12 A I believe that these were things that the organization
13 actually had but they were not being utilized and promoted
14 sufficiently. So we were -- my suggestion was to get them back
15 out there and really roll them out and get people educated
16 about them.

17 Q Okay. I'm going to attempt to share some documents.

18 MS. TUMINARO: Your Honor, I only gained access to
19 SharePoint last night after 5 p.m., so unfortunately, I don't
20 have my documents labeled or paginated. But I will do so and I
21 will upload them hopefully later tonight or tomorrow to
22 SharePoint. And in the meantime, I can show them on the
23 screen. They were all produced by Respondent's counsel. Bear
24 with me one minute.

25 Q BY MS. TUMINARO: Mr. Weir, you indicated that you, as the

1 custodian of records, were involved in preparing the documents
2 produced in response to the subpoena -- the subpoenas that were
3 served on Northeast in this matter, correct?

4 A Yes.

5 JUDGE SANDRON: The -- the -- these were your subpoenas,
6 Ms. Tuminaro?

7 MS. TUMINARO: Yes. The Union served a subpoena on -- on
8 Northeast, and as the custodian of records, I believe Mr. Weir
9 was involved in responding.

10 JUDGE SANDRON: All right.

11 Q BY MS. TUMINARO: Mr. Weir, can you see what's on my
12 screen here?

13 A Yes.

14 Q Okay. If it's -- and it is -- it's a little funny in the
15 format that it's showing up, but it is an email --

16 JUDGE SANDRON: All right. I think we have to identify
17 it, so maybe --

18 MS. TUMINARO: Yes. Well, he can -- I can have him try
19 and identify it or I can identify it.

20 JUDGE SANDRON: Well, it has to have a -- some kind of
21 marking designation.

22 MS. TUMINARO: Yes. So this -- we're going to mark for
23 identification as Union Exhibit 11.

24 JUDGE SANDRON: Okay.

25 Q BY MS. TUMINARO: It is an email dated September 10th,

1 2019 from Seth Rinn to Dave Camerota. And the subject line is
2 "Re: Northeast Center EAC Committee."

3 MS. LANOUE: Your Honor, I object. I don't think we
4 can tell who it's to or who it's from in this format.

5 MS. TUMINARO: Well, I can try and share it in another --
6 hang on a second.

7 JUDGE SANDRON: Does the original that you -- well, that's
8 not an original, but what you received directly in response to
9 the subpoena, does that show --

10 MS. TUMINARO: That -- and -- well, I have it. I don't
11 have it -- Microsoft Outlook installed on my local drive, but I
12 can go into my work drive where it is installed, and hopefully,
13 that won't interfere with my connection, and maybe that will
14 be easier. Let's see if I can -- if that's easier to follow.

15 JUDGE SANDRON: Okay. And -- and -- and to which
16 allegation is this going, this background?

17 MS. TUMINARO: This is -- this is background, and it goes
18 to his recollection. Hang on one second.

19 JUDGE SANDRON: Recollection of -- of what?

20 MS. TUMINARO: Of -- of the wage -- the last wage
21 increases that had been made. He testified before he didn't
22 recall.

23 JUDGE SANDRON: Okay. And -- and to what allegation in
24 the complaint does this go?

25 MS. TUMINARO: Well, this goes to his -- I -- just his

1 general credibility about what it is he's going to talk -- talk
2 about.

3 JUDGE SANDRON: Okay.

4 MS. TUMINARO: Hang on one second -- if I can share the
5 screen.

6 Q BY MS. TUMINARO: Can you see this, Mr. Weir?

7 A Yes.

8 Q Okay. And do you recognize this document as the custodian
9 of records -- this -- we'll mark it as Union Exhibit 10?

10 JUDGE SANDRON: Okay.

11 A I mean, I see the document. I don't recall it, but.

12 Q And here, it's -- it's a document that's dated September
13 10, 2019, 4:06 p.m., Seth Rinn, and it's to Dave Camerota?

14 A Okay.

15 Q And it's entitled "Re: Northeast Center EAC Committee."
16 And if we scroll down here, it re -- references CNA rates, do
17 you see that there?

18 A Yes.

19 Q And when does it say that CNA rates were last adjusted?

20 JUDGE SANDRON: Well, it speaks for itself, I think.

21 MS. LANOUEETTE: Objection, Your Honor.

22 MS. TUMINARO: Okay.

23 MS. LANOUEETTE: Voir dire?

24 MS. TUMINARO: Sure, go ahead.

25 **VOIR DIRE EXAMINATION**

1 Q BY MS. LANOUEETTE: Mr. Weir, are you the only individual
2 who provided emails on behalf of Northeast in response to the
3 subpoena?

4 A I don't believe I am.

5 Q Do you know if you provided this email on behalf of
6 Northeast?

7 A I -- I don't -- don't recall if I sent this specific one.

8 JUDGE SANDRON: All right.

9 MS. LANOUEETTE: Your Honor, I would object to any
10 questions to him that are not as a custodian of records, and
11 that would include any -- any questions regarding the contents
12 of the email.

13 MS. TUMINARO: Well -- well, he just testified a moment
14 ago about his recommendations for shift differentials and --
15 and tuition reimbursement.

16 MS. LANOUEETTE: That doesn't have anything to do with this
17 particular document which he is neither a to --

18 JUDGE SANDRON: All right.

19 MS. LANOUEETTE: -- or a from.

20 JUDGE SANDRON: Well --

21 MS. LANOUEETTE: It contains his recommendations --

22 JUDGE SANDRON: All right. Just a second. Why don't you
23 just ask him, you know, if -- if looking through the document,
24 you know, refreshes his recollection of -- of what he
25 recommended.

RESUMED CROSS-EXAMINATION

1

2 Q BY MS. TUMINARO: Mr. Weir, can you -- looking through
3 this document, does this refresh your recollection about what
4 you recommended as to shift differentials for CSS and NBI?

5 A Yes, I thought I said that I did recommend that. Yes.

6 Q And what -- what were your recommendations?

7 A It looks like I'm recommending --

8 JUDGE SANDRON: All right. Well -- all right, but --

9 MS. LANOUEETTE: Objection.

10 JUDGE SANDRON: Now, just a second. If he's refreshing,
11 he can't be looking at the document. But --

12 MS. TUMINARO: Okay.

13 JUDGE SANDRON: I mean, the document was provided by the
14 Respondent pursuant to a subpoena, so we have to assume that
15 it's bona fide or it wouldn't have been furnished.

16 MS. LANOUEETTE: I have no objection to the admission of
17 the document.

18 JUDGE SANDRON: Okay.

19 MS. LANOUEETTE: I have objections to this witness being
20 asked anything other than custodian of record questions. He is
21 not --

22 MS. TUMINARO: Okay.

23 MS. LANOUEETTE: -- on this email. He has never seen this
24 email.

25 JUDGE SANDRON: Have you ever seen that before?

1 THE WITNESS: No, it doesn't look familiar.

2 JUDGE SANDRON: All right.

3 MS. TUMINARO: Okay.

4 JUDGE SANDRON: All right. Do you wish -- Ms. -- Ms.

5 Tuminaro, do you want to offer the document into evidence?

6 MS. TUMINARO: Yes. I would like to offer Union Exhibit
7 11.

8 JUDGE SANDRON: All right. Any objections?

9 MS. LANOUEETTE: No.

10 JUDGE SANDRON: Okay. The document is received.

11 **(Union Exhibit Number 11 Received into Evidence)**

12 MS. TUMINARO: I'm going to share my screen again.

13 Q BY MS. TUMINARO: Mr. Weir, can you see what's on my
14 screen?

15 A Yes.

16 Q Okay. I'm going to mark this for identification as Union
17 Exhibit 1. Do you recognize this document?

18 A Yes. It looks like an email I sent.

19 Q And can you tell us -- just describe the document, the
20 date, who you sent it to.

21 A It's --

22 JUDGE SANDRON: Well, actually, I don't think we need
23 that. I think it speaks for itself as far as date and content.

24 Q BY MS. TUMINARO: In this email, you used the word
25 staffing -- the term "staffing crisis", correct?

- 1 A I'd have to read it into -- yes, I see the word there.
- 2 Q Okay. And it references a meeting you had with nurse
- 3 managers, ADONs, and staffing coordinator that day, correct?
- 4 A That's what it says, yes.
- 5 Q Okay. And then attached to this email is a document
- 6 marked Open Petit -- "2019 Open Positions", do you see that?
- 7 A Yes.
- 8 Q I'm going to open the attachment. And you reference this
- 9 Excel document in the body of the email, correct?
- 10 A I -- yeah, I'd have to look at that thing, but if it says
- 11 it, I'm sure I did.
- 12 Q Okay. And then here, it says "total NSG openings 59".
- 13 What does that refer to?
- 14 A Just total nursing position openings, LPNs, RNs, CNAs,
- 15 unit managers.
- 16 Q And is that 59, that's the total openings?
- 17 A That's what this document says, yes.
- 18 Q Did you make this Excel document?
- 19 A No, I did not.
- 20 Q Who made it?
- 21 A It is made through the Human Resource Department maintains
- 22 it.
- 23 Q Okay. I'm going to -- and you sent it to corporate,
- 24 correct?
- 25 A Correct.

1 MS. TUMINARO: I'm going to move the admission of Union
2 Exhibit 1 with the attachment, the Excel document that we just
3 looked at.

4 JUDGE SANDRON: You'll have to put it in proper format
5 before it comes in as an exhibit.

6 MS. TUMINARO: I -- I promise I will do that, yes, as soon
7 as I have time.

8 JUDGE SANDRON: Any objection?

9 MS. LANOUEITE: No objection.

10 JUDGE SANDRON: Okay. The document is received.

11 **(Union Exhibit Number 1 Received into Evidence)**

12 Q BY MS. TUMINARO: Mr. Weir, I am going to share my screen
13 again to show you the document we'll mark for identification as
14 Union Exhibit 2. Do you recogni -- can you see what's on my
15 screen?

16 A Yes, I can.

17 Q Okay. And do you recognize this document?

18 A Yes, I do.

19 Q It's an email dated July 5th, 2019, from you to Seth Rinn
20 and Dave Camerota, correct?

21 A Correct.

22 Q All right. And within it, it contains -- well, why don't
23 you tell us what it contains?

24 JUDGE SANDRON: I don't know, are we getting cumulative
25 on -- on some of this? I mean, we definitely have evidence

1 about some of the issues that were --

2 MS. TUMINARO: Okay. I --

3 JUDGE SANDRON: -- at the facility. I'm not sure we're --

4 MS. LANOUEITE: Your Honor, I also object. This has
5 nothing to do with the allegations made in the complaint.

6 MS. TUMINARO: It has to do with the Employer's campaign
7 and what -- what they were motivated by. I would just offer
8 the -- I don't have to ask further questions about it. I would
9 offer Union Exhibit 2.

10 MS. LANOUEITE: Your Honor, I object on the relevancy.
11 There's nothing in here about a Union campaign.

12 MS. TUMINARO: He said a few minutes ago that he didn't
13 recall when the -- what -- whether they were less than other
14 facilities. I'm exploring his credibility.

15 JUDGE SANDRON: All right. But you know -- well, I --
16 I'll overrule the objection and admit it, but credibility on
17 periph -- on peripheral matters is not really going to make a
18 major difference in credibility findings.

19 MS. TUMINARO: Okay.

20 JUDGE SANDRON: If you're dealing with credibility on
21 important subjects, that's different. But when we're getting
22 into, you know, credibility on less significant issues, then
23 it -- it really is not going to be determinative.

24 MS. TUMINARO: I'll move on, Your Honor, but I'd like to
25 offer Union Exhibit 2.

1 JUDGE SANDRON: Do you still object, Ms. Lanouette?

2 MS. LANOUEITE: Yes, I do.

3 JUDGE SANDRON: All right. The objection's overruled,
4 I'll allow the document.

5 **(Union Exhibit Number 2 Received into Evidence)**

6 Q BY MS. TUMINARO: Mr. Weir, is Kristina Plonski the
7 current staff administrator?

8 A The staffing coordinator, yes.

9 Q Staffing coordinator, I'm sorry. And what was her title
10 before she was staffing coordinator?

11 A CNA.

12 Q Do you need special training to be a staffing coordinator?

13 A Special training? No.

14 Q Isn't it true that you promoted Ms. Plonski because she
15 gave you information about the Union campaign?

16 A No.

17 Q She was someone who -- who provided information about the
18 Union campaign to Northeast, correct?

19 A I don't know if she provided -- I never spoke to her.

20 Q Did you learn that she had provided information to
21 Northeast about the Union campaign?

22 JUDGE SANDRON: Well, I think it'd be hear -- well, I
23 think it'd be hearsay as to him, wouldn't it?

24 MS. LANOUEITE: It would be both hearsay and not relevant,
25 Your Honor. Ms. Plonski's promotion is not charged in this

1 case.

2 MS. TUMINARO: Well, she -- she provided a statement
3 against Ms. Todd, Your Honor, and in the course of which, the
4 Employer relied upon that statement in disciplining Ms. Todd.

5 JUDGE SANDRON: Right, but I don't think we can -- real --
6 I think it's beyond our purview to start getting into the bona
7 fides of her promotion that --

8 MS. TUMINARO: We -- we don't have to talk about the bona
9 fides of her promotion, but she was -- she had motive to -- to
10 make up information about Ms. Todd.

11 MS. LANOUEETTE: Objection, Your Honor. Now we have
12 argument, not a question.

13 JUDGE SANDRON: Yes, I -- I agree. I -- I think we really
14 can't get into, you know, her motivation at this point or what
15 the Employer's motivation was in promoting her. That's just
16 going beyond the scope of what we're dealing with in terms of
17 the complaint.

18 Q BY MS. TUMINARO: Mr. Weir, the -- the North -- you've
19 testified about Northeast's campaign against the Union,
20 correct?

21 MS. LANOUEETTE: Objection. He never said it was a
22 campaign against the Union.

23 MS. TUMINARO: I'll -- I'll rephrase.

24 Q BY MS. TUMINARO: Mr. Weir, did the -- did Northeast run a
25 campaign in opposition to the organ -- the Union organizing

1 campaign?

2 A No. I mean, we did education for everybody.

3 Q So you're saying it wasn't in opposition to the employees
4 organizing?

5 A No, it was just -- it was providing education.

6 Q And that education didn't have a bias one way or the
7 other --

8 JUDGE SANDRON: No --

9 Q BY MS. TUMINARO: -- is that your testimony?

10 JUDGE SANDRON: All right. Well, I -- I think it's clear
11 from the record what -- what the Employer did, and the --

12 I -- I don't believe, Ms. Pender, there's any allegation
13 that the company's campaign, we'll call it, was illegal,
14 correct? That anything that they did as such in -- in the
15 campaign was illegal, is there? I -- I might have to review
16 the complaint, but --

17 MS. PENDER: Only with regard to -- to what the
18 alternate -- the alternate theory regarding Ms. Golden's
19 termination, that she was terminated for refusing to commit --

20 JUDGE SANDRON: Right.

21 MS. PENDER: -- unfair labor practices.

22 JUDGE SANDRON: So the legitimacy of the Employer's Union
23 avoidance campaign is not questioned as far as engaging in any
24 illegalities, so. Which they had a right to do if -- if they
25 did it legally.

1 MS. TUMINARO: Well, the Union ra -- the -- the Employer
2 ran a campaign, filed its own RM petition in this -- in -- in
3 this matter, and ran a campaign in opposition to the -- to the
4 employees organizing.

5 JUDGE SANDRON: Well, does the General Counsel consider
6 that to be relevant to the allegations?

7 MS. PENDER: The RM petition is Joint Exhibit 3.

8 JUDGE SANDRON: Right. But -- but is that -- does General
9 Counsel consider that to have been a violation?

10 MS. PENDER: Not the filing of the petition itself, no.

11 JUDGE SANDRON: Well, I'm limited to the allegations that
12 the General Counsel has raised. The Charging Parties are not
13 able to expand the scope of the complaint.

14 Q BY MS. TUMINARO: Mr. Weir, as the administrator of the
15 facility, you don't get involved with every discipline of every
16 employee, correct?

17 A Correct.

18 Q And at what point does a disciplinary matter come to your
19 attention?

20 A If it rises to the level of -- of an investigation for
21 potential abuse, if there -- if it involves a manager.

22 JUDGE SANDRON: Okay. Somebody has, I think --

23 THE WITNESS: Yes.

24 JUDGE SANDRON: Turn something off.

25 MS. TUMINARO: We have an overhead announcement.

1 JUDGE SANDRON: Oh, I see. That's right.

2 THE WITNESS: It'll be done itself shortly.

3 Q BY MS. TUMINARO: When -- when an investigation is done,
4 how many people are usually involved in the investigation?

5 A It -- it depends on what the investigation involves. If
6 it involves residents, well, then the social worker, the social
7 work director, depending on if it's many -- like in this case,
8 where we needed to have, like, many different social workers
9 conducting interviews. It could be the department head of
10 whatever is involved, people who may have witnessed anything,
11 so.

12 Q How -- how many social workers work at Northeast?

13 A Eight.

14 Q And -- and how many social workers were involved in the
15 interviews of the residents pertaining to the allegations
16 against Cathy Todd?

17 A I gave you the list. I was reading the names yesterday,
18 so I don't know how many there wa -- and one we couldn't read,
19 so. Was it six or seven? I don't recall.

20 Q And is that typical that you would have so many social
21 workers involved in one investigation?

22 A It -- depending on the investigation. And in this case,
23 since these -- it involved things that potentially could affect
24 other residents, and we need to interview all the residents as
25 quickly as possible, yes, it is quite common we do that.

1 Q BY MS. TUMINARO: Who was the staffing coordinator prior
2 to December of 2019?

3 A Kim -- Kimberly Bennett.

4 JUDGE SANDRON: Can you spell her name, if you know it?

5 MS. PENDER: I think that's already in the record, Your
6 Honor.

7 JUDGE SANDRON: Oh, okay. Fine.

8 Q BY MS. TUMINARO: And why did she leave Northeast?

9 A She was terminated.

10 Q And you testified that Kathy McCormick, the DON, was
11 terminated, correct?

12 A Yes.

13 Q And -- and when was Ms. Bennett terminated?

14 A Beginning of November, I think.

15 Q 2019?

16 A Yes, I'm sorry.

17 Q And when was Kathy McCormick terminated?

18 A October 31st, 2019.

19 Q And the RN night supervisor was also terminated, correct?

20 A One -- one of them, yes.

21 Q Which one?

22 A Estrella -- I don't know what her --

23 Q Attanasio, is that her name?

24 A Yes, Attanasio.

25 JUDGE SANDRON: You need to spell it.

1 MS. LANOUEETTE: Estrella is E-S-T --

2 THE WITNESS: R-E-L-L-A.

3 MS. LANOUEETTE: And Attanasio is A-T-A-N-A-S-I-O.

4 MS. PENDER: It's actually A-T-T-A-N-A-S-I-O.

5 JUDGE SANDRON: Thank you.

6 Q BY MS. TUMINARO: And when was she terminated?

7 A I don't remember. It was -- yeah, I don't remember.

8 JUDGE SANDRON: I think we'll finish up with the --

9 MS. TUMINARO: I just have a few more questions about
10 documents, and then I -- I think I'm -- I'm finished.

11 MS. LANOUEETTE: Your Honor, I would ask that we finish his
12 cross-examination before we break for lunch today.

13 MS. TUMINARO: I -- I -- I don't think I'll be more than a
14 few more minutes.

15 MS. LANOUEETTE: I understand, but Ms. Joslin still has to
16 go. We -- we couldn't even start Mr. Endy because it might
17 split his testimony.

18 JUDGE SANDRON: All right. We will -- we'll try to finish
19 his cross before lunch.

20 Q BY MS. TUMINARO: Mr. Weir, isn't it true that Northeast
21 planned a pay raise in order to win its battle against a union
22 avoidance?

23 MS. LANOUEETTE: Objection, Your Honor. It's not relevant
24 to an allegation.

25 MS. TUMINARO: Well, he testified a few moments ago that

1 they just provided education, and it didn't have anything to do
2 with the position in -- in the Union. I'm exploring his
3 credibility, Your Honor.

4 MS. LANOUEETTE: And Your Honor, this isn't a charged
5 issue.

6 MS. TUMINARO: Well --

7 JUDGE SANDRON: I -- I agree. I -- I think we're going a
8 little bit far afield at this point in terms of the credibility
9 issue. So I -- I don't think it's relevant to the allegation.

10 Q BY MS. TUMINARO: Mr. Weir, did -- did the Employer knock
11 out employees access to Facebook at the facility?

12 MS. LANOUEETTE: Objection. Relevance.

13 JUDGE SANDRON: Ms. Pender, does this go to any of the
14 allegations in the complaint?

15 MS. PENDER: I don't think -- there's no -- there's no
16 allegation in the complaint about knocking out Facebook.

17 JUDGE SANDRON: All right. I -- I -- I -- so I'll sustain
18 the objection. I think that --

19 MS. TUMINARO: Okay. I -- I can be finished.

20 JUDGE SANDRON: Okay. So Ms. Joslin, do you have any
21 questions on cross-examination of the witness?

22 MS. JOSLIN: Yes, Your Honor. Thank you.

23 **CROSS-EXAMINATION**

24 Q BY MS. JOSLIN: Mr. Weir, I'm just going to ask you a few
25 follow-up questions regarding Tara Golden who is my client, if

1 you recall. Okay. I'd like to first call your attention back
2 to your October 31st, 201, meeting with Ms. Golden. You know,
3 after her suspension when she returned, and -- you know, when
4 you permitted her to come back.

5 A Okay.

6 Q Earlier today, Ms. Pender refreshed your recollection of
7 that meeting by allowing you to listen to a recording made by
8 Tara.

9 A Yes.

10 Q And we can do that again, if necessary, but I'm going to
11 see if you --

12 MS. LANOUE: Can we get to a question, Your Honor?

13 JUDGE SANDRON: Well, I think she's leading -- leading up
14 to, you know, a question, as far as laying a predicate.

15 MS. JOSLIN: Thank you, Your Honor.

16 Q BY MS. JOSLIN: During that meeting with Ms. Golden,
17 toward the end of the meeting, didn't you state to her "You're
18 not being threatened, you're being told. We don't want to lose
19 anybody, but if you're pro-union, you won't be able to stay in
20 your job." Did you say those words to her?

21 A I don't recall, but if they're in part of that recording,
22 I would have to say, yes.

23 Q Okay. And how about this? Did you say this? "If there's
24 anything I can do, any more direction -- if you have any
25 questions or concerns, please just let me know'? Did you say

1 that?

2 A It sounds like something I would say.

3 Q Okay. You wanted to help her, right? You wanted to help
4 her succeed?

5 A Yes.

6 Q Okay. And didn't you say to her at the end of that
7 meeting, "I'm really glad to see you here"?

8 A I did say that, yes.

9 Q Okay. And this was on October 31st, 2019, right?

10 A Yes.

11 Q Okay. So between October 31st, 2019 and her termination
12 on November 20th, 2019, Ms. Golden was required to attend
13 certain management meetings with the consultants, and we've
14 been talking about that pretty much quite a bit, right?

15 A Yes.

16 Q Okay. And during those meetings with the consultants,
17 Keith Peraino was present, right?

18 A Yes.

19 Q Okay. Was he present for all of them?

20 A I don't believe so.

21 Q Okay. Was he present -- was he present for at least one
22 of those consultant meetings every day?

23 A No.

24 Q Okay. During those consultant meetings, weren't attendees
25 of the -- of the meeting specifically asked whether -- what

1 their impressions were regarding employees and their
2 perspectives on the Union?

3 A What their perspectives are?

4 Q Yes.

5 A Just asking, yeah, about -- I think -- believe that would
6 be a way of wording it, yes.

7 Q Okay. And weren't employees that attended these meetings
8 asked what they thought about certain employees?

9 A I don't recall that --

10 Q Okay.

11 A -- I mean.

12 Q Okay. Weren't these attendees at the meeting asked for
13 specific names of individuals that were appearing to be in
14 favor of the Union?

15 A Asking to what with the names?

16 Q Weren't -- weren't these attendees specifically asked for
17 the names of individuals that they thought appeared to be pro-
18 union?

19 A I don't recall it coming across that way, but I don't
20 believe that that was what -- what was asked.

21 Q Okay. Well, during these meetings, didn't attendees at
22 the meeting specifically name individual employees of the
23 Center and state whether they were in favor of or against the
24 Union?

25 A That was part of the problem, that some people tried to do

1 that, and we were -- kept telling people that that -- that was
2 not what we were to be doing, the reeducation.

3 Q Okay. Didn't Mr. Peraino actually have a list in his hand
4 of employees of the Center during these meetings?

5 A Not that I know of.

6 Q Didn't Mr. Peraino write down the names of people who were
7 pro-union and antiunion on a pad in front of him, in front of
8 the attendees?

9 A I don't recall that.

10 Q So you never saw a list of employees?

11 A No, I don't know what they were writing on the -- I -- I
12 wasn't sitting with him. I was in the room. And they were
13 taking notes about things, but I don't know what they were
14 writing down.

15 Q Okay. So to your knowledge, you're not aware that --
16 whether Mr. Peraino was actually writing names of people down?

17 A Correct.

18 Q Okay. Now, Ms. Golden wasn't the only employee who
19 offered up names of people that she thought were antiunion;
20 isn't that correct?

21 A At the beginning, I believe that there were a couple
22 people, and -- but that was stopped when they were all educated
23 that that was not what the meetings were about.

24 Q When you say "at the beginning," what time period are you
25 referring to?

1 A We -- we started the education -- well, we started the
2 education pieces at the end of July, beginning of August, when
3 they first came in, we started those meetings.

4 Q Okay. So let's -- let's skip to October 28th.

5 A Okay.

6 Q Well, let's -- let's actually skip to October 31st when
7 Ms. Golden came back to work, okay. As of October 31st, were
8 any employees at these meetings mentioning the names of other
9 employees that they believed to be antiunion?

10 A I don't remember. I don't remember that. I don't
11 remember specifics, so I'm sorry.

12 Q Okay. But you remember that Tara Golden was mentioning
13 names, right?

14 A I remember that Tara had done it on several occasions,
15 yes.

16 Q Okay. Do you know who Francine Rivenburgh is?

17 A Yes.

18 Q Okay. Do you know how to spell her name?

19 A Francine, F-R-A-N-C-I-N-E, Rivenburgh, R-I-V-E-N-B-U-R-G
20 (sic).

21 Q Thank you. She's in the business office, right?

22 A No.

23 Q Where -- where's -- where does she work?

24 A She is a unit manager.

25 Q Which unit?

- 1 A NRP2.
- 2 Q Okay. Now she attended these meetings, right, these
3 consultant meetings?
- 4 A Yes.
- 5 Q And she, in fact, had provided names of people that she
6 thought were pro-union, isn't that correct?
- 7 A I -- I don't remember.
- 8 Q You don't remember her ever mentioning the name of any
9 individual who was pro-union?
- 10 A I -- no, I don't.
- 11 Q Okay. Okay. Do you know if Ms. Rivenburgh ever mentioned
12 the name of an individual who was antiunion?
- 13 A No.
- 14 Q Okay.
- 15 A I don't --
- 16 Q Was Ms. --
- 17 A I just don't remember, no. I'm sorry, I can't.
- 18 Q Okay. Did -- did Ms. Rivenburgh ever get disciplined or
19 counseled for mentioning the names of people at any of these
20 meetings?
- 21 A No, I don't believe so.
- 22 Q Okay. Do you know who Linda is in the business office?
- 23 A Yes.
- 24 Q What's her last name?
- 25 A Fardella, F-A-R-D-E-L-L-A.

1 Q Thank you. Now --

2 JUDGE SANDRON: And -- and Linda is with an I, Linda?

3 THE WITNESS: Yes.

4 MS. JOSLIN: Thank you.

5 Q BY MS. JOSLIN: She attended these consultant meetings as
6 well, right?

7 A Yes.

8 Q Okay. And -- and she also provided names of people who
9 were either pro- or antiunion during the meetings; isn't that
10 right?

11 A I don't recall.

12 Q Okay. Do you know whether she was ever disciplined or
13 counseled for -- for mentioning the names of people?

14 A No, she wasn't.

15 Q Okay. Do you know the director of, I think, dietary
16 services, Shari?

17 A Shari Liebel, S-H-A-R-I L, I'm not sure if it's E-I or I-
18 E, B-E-L.

19 Q Thank you. And Ms. Liebel attended these consultant
20 meetings, is that right?

21 A Yes.

22 Q And didn't Ms. Liebel mention the names of employees that
23 she thought were pro- and antiunion?

24 A Again, I don't recall.

25 Q Do you know whether Ms. Liebel was ever counseled or

1 disciplined for mentioning the names of people during these
2 consultant meetings?

3 A No, I do not believe so.

4 JUDGE SANDRON: Well, I think you had mentioned a couple
5 of individuals mention names of people who were either pro- or
6 antiunion. Do you remember -- remember any of the specific
7 individuals other than Ms. Golden who did that? Because you
8 say you can't remember these specific individuals, but can you
9 remember any other specific --

10 THE WITNESS: I --

11 JUDGE SANDRON: -- individuals?

12 THE WITNESS: I think that maybe the director of rehab may
13 have said something at the very beginning. And then once we --
14 we were all educated again regarding that we cannot be doing
15 that, the -- it stopped.

16 Q BY MS. JOSLIN: Was any other employee disciplined or
17 counseled for mentioning names during one of these management
18 meetings?

19 A No.

20 MS. LANOUEETTE: I'm going to object to the
21 characterization.

22 MS. JOSLIN: Of what?

23 MS. LANOUEETTE: Who is disciplined for mentioning names.

24 Q BY MS. JOSLIN: Mr. Weir, do you understand what I mean by
25 that?

1 A I bel -- I believe you were meaning that they're
2 mentioning names of people who were supporting or against the
3 Union.

4 Q That's correct. Thank you. With that understanding, do
5 you know if anyone else in the facility besides Ms. Golden was
6 counseled or disciplined for doing so?

7 A No, I do not think anyone else was counseled or -- well,
8 counseled -- the entire fa -- the entire room was counseled
9 when it happened the first time.

10 Q Okay.

11 A And then everybody else stopped.

12 Q I'm sorry, and that was in July?

13 A I -- they started in July. I'm not sure if we started --
14 you know, those regular meetings began in August, so it was --

15 Q Okay. Let's -- I'm going to direct your attention now
16 to -- I apologize -- Ms. Golden's -- her termination meeting on
17 November 20th, 2019. Now, during the meeting -- it was a
18 pretty short meeting, is that right?

19 A Yes.

20 Q Okay. And -- and the only re -- reason you gave her for
21 her termination was that she's no longer a good fit; isn't that
22 right?

23 A That was -- yes.

24 Q Okay. And she asked you, you know, to explain that
25 further. She asked you why; isn't that right?

- 1 A Probably.
- 2 Q Okay. You said she was shocked, right?
- 3 A She was shocked.
- 4 Q And she was upset?
- 5 A Yes.
- 6 Q Okay. Didn't you also tell her that you were going in a
7 different direction?
- 8 A Could be.
- 9 Q Okay. But you never mentioned anything to her about
10 improperly providing the names of people who were pro- or
11 antiunion; isn't that right?
- 12 A As a -- as a reason? No, I did not.
- 13 Q Okay. And you never gave her any other reason either,
14 right?
- 15 A No.
- 16 Q Didn't the consultants or one of the consultants tell you
17 to fire Ms. Golden?
- 18 A No.
- 19 Q No? Did Mr. Peraino suggest that you probably should fire
20 her?
- 21 A At that time, I do not believe so.
- 22 Q Did any -- anyone tell you you should fire her?
- 23 A No, I -- her -- because of what had taken place earlier in
24 that day, I -- there was a frustration that she continued to do
25 the same things that she had been educated not to do; not

1 learning how to be a manager and to take those kinds of
2 directions regarding what we are able to and could be -- should
3 be doing. And so I do know that there was a communication with
4 myself, Keith Peraino, and I'm not sure if Seth Rinn was
5 involved in it or Dave Camerota. And I remember them saying
6 that I'm okay at this point. I basically didn't think that she
7 was going to be able to make this transition.

8 Q So why didn't you offer her a nursing position then?

9 A I don't know why. I really believe that it was just the
10 best move for the facility.

11 Q To terminate her altogether?

12 A Yes.

13 Q And at the time that you terminated her, there was a
14 nursing shortage at the facility; isn't that right?

15 A Yes.

16 Q And you're not aware of any problems with Ms. Golden's
17 ability to -- to perform the nursing position at that facility,
18 right?

19 A At a nursing position, no, never.

20 MS. JOSLIN: Your Honor, may I just have a moment to
21 review some of my notes?

22 JUDGE SANDRON: Yes, we'll -- we'll just pause for a
23 moment.

24 MS. JOSLIN: Your Honor, I'm all set. Thank you.

25 Q BY MS. JOSLIN: Just one follow-up question, Mr. Weir.

1 Isn't it true that Mr. Peraino was discussing with you via
2 email and in-person discussions about which employees at the
3 facility appeared to be pro-union and which ones appeared to be
4 antiunion?

5 A I -- I do believe that we had conversations. I don't
6 remember any emails, but I do believe.

7 Q There were discussions about that though, right?

8 A Between him and myself, yes.

9 Q Okay. Because that was important to you, right, to know
10 which employees were pro-union and which employees were
11 antiunion?

12 A No, not to me. It's not -- it's an educa -- again, we
13 were doing education. People have the right to choose what
14 they want to do.

15 Q Okay. Weren't you and the consultants discussing where
16 the pro-union employees were meeting to discuss the Union?

17 A No, I -- I -- I did hear about it, but I did not discuss
18 that with them, except for the fact that there -- there was a
19 discussion because there was a paper at one point saying that
20 there was a meeting being held at Angela's Pizza. And the --
21 the consultants actually were very specific to tell people to
22 avoid those area -- avoid the pizza parlor and avoid any areas
23 where people may be gathering.

24 Q Who -- who was being told to avoid those areas?

25 A The managers. It was told at those morning meet -- those

1 meetings.

2 Q Weren't the managers told to -- to -- to happen upon those
3 meetings so they could hear --

4 A No.

5 Q -- what was discussed?

6 A Absolutely not.

7 Q Okay.

8 MS. JOSLIN: Your Honor, that's all I have. Thank you.

9 JUDGE SANDRON: All right. Well, I think we've concluded
10 with cross-examination. Maybe we'll take a recess before we
11 have any redirect.

12 MS. LANOUEETTE: Your Honor, I only have two redirect
13 questions.

14 JUDGE SANDRON: Oh. All right. Well, then why don't you
15 go ahead and ask those now.

16 **REDIRECT EXAMINATION**

17 Q BY MS. LANOUEETTE: Mr. Weir, you've been asked a lot about
18 what Mr. Peraino did and didn't recommend. Did every
19 recommendation that Mr. Peraino made get implemented?

20 A No.

21 Q And you were asked by Counsel about several names in R-6
22 where there were other workers who came up in the courses of
23 the interviews. Was Ms. Todd terminated solely because of the
24 interviews contained in R-6?

25 A No.

1 MS. LANOUEETTE: Those are the only questions I have.

2 JUDGE SANDRON: All right. Any redirect from General
3 Counsel -- any further recross from the General Counsel or
4 other counsels?

5 MS. PENDER: Not from the General Counsel, Your Honor.

6 MS. TUMINARO: I have one question.

7 **RECROSS-EXAMINATION**

8 Q BY MS. TUMINARO: Mr. -- Mr. Weir, isn't it true that
9 Keith Peraino recommended that Kristina Plonski be given one of
10 three different positions after she submitted a statement?

11 JUDGE SANDRON: All right. I think you're going beyond --

12 MS. LANOUEETTE: Objection.

13 JUDGE SANDRON: All right. You're going beyond the scope
14 of the cross.

15 MS. TUMINARO: Well, he -- he -- she -- Ms. Lanouette
16 questioned about whether he followed his recommendations.

17 MS. LANOUEETTE: It -- it's also not relevant. Ms. Plonski
18 is not at issue.

19 MS. TUMINARO: She's not at issue, but she provided a
20 statement as -- as part of the campaign, and supplied
21 information. I can -- you know what. I can -- I'd like to
22 show him one document.

23 MS. LANOUEETTE: There's no allegation that --

24 JUDGE SANDRON: No, no. All right. All right, I think
25 that we --

1 MS. LANOUEETTE: -- there was improper supplying of
2 information.

3 JUDGE SANDRON: All right. All right.

4 MS. TUMINARO: I -- I'll leave. Thank you.

5 JUDGE SANDRON: And Ms. Joslin, anything else?

6 MS. JOSLIN: No, Your Honor. Thank you.

7 JUDGE SANDRON: Okay. Well, I think then, we're -- we're
8 done with the witness. I -- we can take our lunch recess.
9 Would -- I think about 45 minutes, that seemed to work fairly
10 well, unless anybody feels you need more. But I think 45
11 works. Is that -- anybody feel that they need more time before
12 we start?

13 All right. So it's now 12:20. Why don't we come back at,
14 say, 1:05 p.m. and then we'll take the next witness. Okay.
15 Have a good lunch hour.

16 MS. LANOUEETTE: Thank you.

17 MS. TUMINARO: Thank you, Judge.

18 (Off the record at 12:21 p.m.)

19 JUDGE SANDRON: All right. So we're ready to go on the
20 record. Do you have your next witness?

21 MS. LANOUEETTE: I do, Your Honor. We call Sheranique
22 Lewinson. Sheranique is S-H-E-R-A-N-I-Q-U-E and Lewinson is
23 L-E-W-I-N-S-O-N.

24 JUDGE SANDRON: Oh, okay. If you'll please raise your
25 right hand, ma'am, I'll -- I'll swear you in.

1 MS. LEWINSON: Okay.

2 Whereupon,

3 SHERANIQUE LEWINSON

4 having been duly sworn, was called as a witness herein and was
5 examined and testified as follows:

6 JUDGE SANDRON: I think Counsel has -- you can -- you said
7 yes, right?

8 THE WITNESS: Yes.

9 JUDGE SANDRON: Okay. You can lower your hand, that's
10 fine. Your -- Counsel has already spelled your name for the
11 record. Could you give us an address?

12 THE WITNESS: 45 Birch Street. You want my home address?

13 JUDGE SANDRON: You could give your home or work address
14 if you want.

15 THE WITNESS: Okay. My work address is 300 Grant Avenue,
16 Lake Katrine, New York 12449.

17 JUDGE SANDRON: Thank you.

18 THE WITNESS: Uh-huh.

19 JUDGE SANDRON: We're getting static.

20 MS. LANOUE: For the record, Your Honor, we just want
21 to note that Mr. Weir is in the room with me.

22 JUDGE SANDRON: Anybody else getting static?

23 THE WITNESS: Yes. Yes.

24 JUDGE SANDRON: I think there's a problem with the
25 recording. Yeah. Okay.

1 MS. HAMMONDS: I'm going to mute you, Mr. Baker.

2 MS. PENDER: Is that going to interfere with the recording
3 at all?

4 MS. HAMMONDS: I believe the recording is on the phone
5 line -- a separate phone line.

6 MS. PENDER: Okay.

7 JUDGE SANDRON: Thank you, Counsel.

8 MS. TUMINARO: Can't hear you, Judge. Still can't hear
9 you.

10 JUDGE SANDRON: I'm not on mute. Can anybody hear me now?

11 MS. HAMMONDS: If you could just move your microphone up
12 to your mouth a little bit more. Yeah, right there should be
13 good.

14 JUDGE SANDRON: Okay. Now I think we're okay. Can you
15 hear me now?

16 MS. TUMINARO: Yes.

17 JUDGE SANDRON: I think then we're ready.

18 MS. LANOUEETTE: I want to note for the record, Your Honor,
19 that Mr. Weir is in the room with me, and Ms. Lewinson is in
20 her own room.

21 JUDGE SANDRON: Thank you.

22 **DIRECT EXAMINATION**

23 Q BY MS. LANOUEETTE: Ms. Lewinson, where are you employed?

24 A The Northeast Center.

25 Q And what is your position at the Northeast Center?

1 A I'm a CNA.

2 Q How long have you been a CNA at the Northeast Center?

3 A About two-and-a-half years.

4 Q I want to show you what has been marked as Exhibit R-1.

5 And ask if you recognize that document. What do you recognize
6 that document to be?

7 MS. TUMINARO: Can you show the rest of us, as well?

8 MS. LANOUEETTE: I don't have my --

9 MS. HAMMONDS: What -- I can just -- is it --

10 MS. LANOUEETTE: R-1.

11 MS. HAMMONDS: R-1. Okay.

12 A That's my statement.

13 JUDGE SANDRON: Oh, can you pull it up on the -- just so I
14 can see it? Oh, here it is. So we can follow along as we go.

15 Q BY MS. LANOUEETTE: And could you repeat what is R-1?

16 A My statement.

17 Q Okay. Is that your signature at the bottom of R-1?

18 A Yes.

19 Q Do you know about when you made this statement?

20 A I want to say between October and November of 2019.

21 Q And how did you come to make this statement?

22 A I was working with Cathy Todd. And I noticed, like, some
23 foul behavior towards neighbors. So I reported it to my unit
24 manager, and then went from there.

25 Q And who is your unit manager?

1 A Cindy Pope.

2 Q Did you bring her this statement already written, or
3 did -- did you -- she ask you to write it? How did you come to
4 write a statement?

5 A I told her about it. And then she asked me to write
6 everything down that I saw. And that's how this came about.

7 Q Did anyone tell you what to write?

8 A No.

9 MS. LANOUEETTE: Your Honor, at this time I offer Exhibit
10 R-1.

11 JUDGE SANDRON: I think it's -- has it been admitted? I
12 thought --

13 MS. LANOUEETTE: No, it was not admitted.

14 JUDGE SANDRON: Okay. You just had it marked.

15 Any voir dire or objections?

16 MS. PENDER: No objections.

17 MS. TUMINARO: No objection.

18 JUDGE SANDRON: Hearing no objection, Respondent's Exhibit
19 1 is received.

20 Q BY MS. LANOUEETTE: And Ms. Lewinson, did anybody tell you
21 to make the complaint that's in Exhibit R-1?

22 A No. I just told her about it on my own. And then she had
23 me write the statement, so.

24 MS. LANOUEETTE: That's all the questions I have, Your
25 Honor.

1 JUDGE SANDRON: Cross-examination?

2 MS. PENDER: Yes. Briefly, Your Honor.

3 **CROSS-EXAMINATION**

4 Q BY MS. PENDER: Hi. Good afternoon, Ms. Lewinson. My
5 name is --

6 A Hello.

7 Q -- Alicia Pender. I'm the counsel for the National Labor
8 Relations Board in this matter. I just have a quick question
9 for you. You stated your unit manager is Cindy Pope, right?

10 A Yes.

11 Q Sorry, you have to say yes or no.

12 A Yes. Sorry.

13 Q Thank you.

14 JUDGE SANDRON: I think -- I think we want to put this in
15 the time frame of late 2019, you know.

16 MS. PENDER: Right. I think that -- I think she -- she
17 said that.

18 THE WITNESS: Yes. I did.

19 JUDGE SANDRON: Oh, all right.

20 Q BY MS. PENDER: Did Cindy Pope -- in October or November
21 2019, before you wrote the statement, did Cindy Pope come to
22 you and ask if there was anything wrong?

23 A Yes, because one day she brought up Cathy Todd's name and
24 I, like, did a gesture. And that's when she's like, okay,
25 what's going on. And that's when I let her know everything

1 that was going on.

2 Q And that's when she asked you to write the statement to
3 reflect what you had told her?

4 A Yes.

5 Q And that statement is R-1 that we just looked at?

6 A Yes.

7 JUDGE SANDRON: So did -- so did -- so did she raise Ms.
8 Todd's name, or did you raise Ms. Todd's name?

9 THE WITNESS: You said -- say that one more time?

10 JUDGE SANDRON: Did you raise -- in other words, you --
11 you made these statements about Ms. Todd. Were you --

12 THE WITNESS: Yes.

13 JUDGE SANDRON: -- the one who initiated that discussion,
14 or did Ms. Pope mention her name?

15 THE WITNESS: She mentioned her name first. And that's
16 when I went on to let her know the complaints.

17 JUDGE SANDRON: And do you remember what -- how she raised
18 Ms. Todd's name?

19 THE WITNESS: No, I don't.

20 JUDGE SANDRON: And where were you at the time?

21 THE WITNESS: We were at work on the unit.

22 JUDGE SANDRON: Was anybody else but the two of you there
23 at the time?

24 THE WITNESS: Was anyone else there, too?

25 JUDGE SANDRON: Was anybody else with the two of you when

1 you had this discussion?

2 THE WITNESS: Oh, no.

3 JUDGE SANDRON: And do you remember the time of day that
4 was?

5 THE WITNESS: It was definitely after 3 because I worked
6 the 3 to 11 shift.

7 Q BY MS. PENDER: Were you working at the time you had the
8 conversation with Ms. Pope?

9 A Yes.

10 Q Were any neighbors present for that conversation?

11 A No.

12 Q Ms. Lewinson, do you know Ms. Lanouette, the -- the
13 Respondent's attorney?

14 A Yes.

15 Q Did you have a chance to go over your testimony today
16 before you testified?

17 A Yes.

18 Q When did you do that?

19 A Right before.

20 Q Right before. Who was there when you did that?

21 A Just me and her.

22 Q And by her you mean Ms. Lanouette?

23 A Yes.

24 Q Thank you. Where did that conversation take place?

25 A In an office.

1 Q How did you know to -- to go participate in that
2 conversation?

3 A She asked to talk to me.

4 Q Did she come up to you herself and ask to talk to you?

5 A Yes.

6 Q Where were you when that happened?

7 A I was already in the administrative, like, area.

8 Q Why were you there?

9 A Because she let me know that we were about to have the
10 trial.

11 Q And how did you know that you needed to be present
12 before -- when we were about to have the trial?

13 A Because I spoke to her previously, like a couple weeks ago
14 about everything. So she warned me.

15 Q When you spoke to her a couple of weeks ago, what did you
16 talk about?

17 A My statement.

18 Q Were you at work when you talked to Ms. Lanouette about
19 your statement?

20 A Yes.

21 Q Were you pulled off your -- off your floor to go talk to
22 her?

23 A Yes.

24 Q Who told you to go talk to Ms. Lanouette?

25 A The administrator.

1 Q Was that Mr. Weir?

2 A Yes.

3 Q What did he tell you when he told you to go talk to her?

4 A He just simply said that the attorney wants to talk to me
5 about my statement that I made a while ago.

6 Q And when you talked to Ms. Lanouette a few weeks ago about
7 your statement, who was present during your conversation with
8 her?

9 A Just Mr. Weir.

10 Q And who did most of the talking during that meeting that
11 you had?

12 A Me.

13 Q Did anyone tell you that your participation in this trial
14 was voluntary?

15 A No.

16 Q Did anyone assure you that no reprisals would take place
17 if you refused to testify?

18 A No.

19 MS. PENDER: I have nothing further, Your Honor.

20 JUDGE SANDRON: Ms. Tuminaro, any questions?

21 MS. TUMINARO: No questions, Your Honor.

22 JUDGE SANDRON: And Ms. Joslin?

23 MS. JOSLIN: No questions, Your Honor. Thank you.

24 JUDGE SANDRON: How -- how -- how long had you worked with
25 Ms. Todd before you wrote this complaint? Do you recall how --

1 how long you worked with her?

2 THE WITNESS: From July until about when she got fired.

3 So November. July to November 2019.

4 JUDGE SANDRON: And had you filed any complaints about her
5 earlier --

6 THE WITNESS: No.

7 JUDGE SANDRON: -- like this one?

8 THE WITNESS: No.

9 JUDGE SANDRON: Ms. Lanouette, any redirect?

10 MS. LANOUEETTE: No, Your Honor.

11 JUDGE SANDRON: Okay. Well -- well, thank you for your
12 testimony. You're done.

13 THE WITNESS: Okay. Got it. Thank you.

14 MS. LANOUEETTE: Your Honor, we will get our next witness.

15 JUDGE SANDRON: I guess we'll go on pause for a moment.

16 (Off the record at 1:21 p.m.)

17 JUDGE SANDRON: Okay. I think we're ready then for the
18 next witness.

19 MS. LANOUEETTE: Sorry, Your Honor.

20 JUDGE SANDRON: That's all right.

21 MS. LANOUEETTE: Respondent calls Cindy Pope.

22 JUDGE SANDRON: Okay. Hi, Ms. Pope. I'll -- I'll swear
23 you in. So if you'd raise your right hand.

24 Whereupon,

25 CYNTHIA POPE

1 having been duly sworn, was called as a witness herein and was
2 examined and testified, telephonically as follows:

3 JUDGE SANDRON: You can lower your hand. If you'll please
4 state and spell your full and correct legal name and provide us
5 with an address, either home or business.

6 THE WITNESS: Okay. My name is Cynthia Pope,
7 C-Y-N-T-H-I-A, last name, P-O-P-E. What else did you need?

8 JUDGE SANDRON: Oh, an address, either home or work.

9 THE WITNESS: My work address is 300 Grant Avenue, Lake
10 Katrine, New York 12449.

11 JUDGE SANDRON: Thank you.

12 **DIRECT EXAMINATION**

13 Q BY MS. LANOUEETTE: Ms. Pope, where are you employed?

14 A I'm employed at the Northeast Center for Rehabilitation
15 and Brain Injury.

16 Q What is your current position at the Northeast Center?

17 A LPN MDS coordinator.

18 Q When did you become an LPN MDS coordinator?

19 A March of last year.

20 Q So March of 2020?

21 A Yes.

22 Q Okay. Before that, what was your position?

23 A I was an LPN unit manager.

24 Q For which unit?

25 A NRP4.

1 Q How long were you the unit manager for NRP4?

2 A Approximately 15 years.

3 Q And before you became the unit manager for NRP4, did you
4 hold any positions at Northeast Center?

5 A I did.

6 Q What were -- was that position?

7 A I was a charge nurse for a few years. And then a floor
8 nurse starting in 1999.

9 Q What degree do you hold?

10 A An LPN.

11 Q And are you licensed or certified?

12 A I am licensed. Yes.

13 Q What does a unit manager do at Northeast Center?

14 A Unit manager is responsible for the care plans, updating
15 them, oversight and supervision of your staff for all three
16 shifts, looking at the payroll every week to make sure people
17 have punched in and punched out properly, making sure they
18 punched in and out for their breaks. I've also been involved
19 in the hiring process of CNAs and LPNs, too, as well. And just
20 to make sure that the care is carried out properly through all
21 the staff, medications, and patient care is done.

22 Q In the nursing -- in the nursing department, who does the
23 evaluations of staff?

24 A I do the evaluations for my staff on my unit.

25 Q Okay. What -- what is the process for completing

1 evaluations?

2 A There is a form that is filled out and it's graded that
3 way. And then you have, you know, maybe your suggestions and
4 what the goals might be for -- for the next year.

5 Q And in the nursing department, who is responsible for
6 discipline of employees?

7 A I can discipline the employees of my unit. Yes.

8 Q Okay. And what is the process for disciplining employees
9 on your unit?

10 A There -- there is a -- there is a form. Once again, it's
11 called a disciplinary action form, which you fill out. It
12 either would be reeducation, verbal warning, or termination, or
13 suspension.

14 Q Okay. After you fill out the form, what do you do?

15 A You would bring it forth with a staff member. And usually
16 with another person present you would want to do that.

17 Q After you meet with the staff member, what do you do with
18 the form?

19 A The form would go up to the director of nursing.

20 Q As a unit manager, could you approve overtime?

21 A No.

22 Q How are you paid as a unit manager?

23 A I am paid a salary.

24 Q And as a unit manager, what hours do you work?

25 A Usually eight hours a day. And I can vary those hours how

1 I need to. But it's usually more -- at least always more than
2 eight hours a day. Always.

3 Q So you might be scheduled for eight hours? Are you
4 scheduled for eight hours and -- or how does that work?

5 A Well, that's kind of how it happens. Sometimes I come in
6 very, very early in the morning if I want to see my overnight
7 staff, and stay later in the afternoon to see the evening
8 staff. So this way you can at least touch base with everybody.

9 Q In 2019, who did unit managers report to?

10 A That would be Kathy McCormick.

11 Q And what was her position?

12 A She was the director of nursing.

13 Q And after she was terminated on October 31st, 2019, who
14 did unit managers report to?

15 A Carolyn Carchidi.

16 Q How would you describe the relationship between Ms.
17 McCormick and the unit managers?

18 A She ran things with an iron fist. And we didn't realize
19 until she was gone just how traumatizing it could have been.
20 She led with fear. You know, you -- if you didn't pick up
21 extra time, you were kind of frowned upon, talked about. You
22 would bring things to her attention that you felt were serious
23 enough that really needs to be addressed and you'd hear, well,
24 we'll have to do something about it. And then nothing ever
25 happened.

1 Q How is that -- what happened when you brought concerns --
2 you mentioned concerns or things that were serious.

3 A Uh-huh.

4 Q What happened when you brought concerns about nurses on
5 your shift to Ms. McCormick?

6 A It would be -- there was -- there was one nurse in
7 particular. And try to bring that to her attention that there
8 was -- something wasn't right, you know, she had outspoken or
9 wasn't doing things correctly. And you -- I would bring it to
10 her and she would be like, yeah, we -- we probably need to move
11 her, or we probably need to do something else. And then it
12 would just fall on deaf ears.

13 Q How was that -- how did that become different when Carolyn
14 Carchidi became the director of nursing?

15 A You were at ease to go and approach her. And you felt
16 comfortable with problems that you could bring to her. And you
17 didn't feel like it was being shoved away and you -- you were
18 being dismissed.

19 Q And have you ever had occasion to bring a problem to Ms.
20 Carchidi's attention with regard to a nurse or CNA on your
21 unit?

22 A Yes, I did.

23 Q And how was that handled?

24 A She handled that appropriately. She took it immediately
25 and did an investigation.

1 Q Do you know who Cathy Todd is?

2 A Yes, I do.

3 Q How do you know who she is?

4 A Cathy Todd was my evening LPN on NRP4.

5 Q Okay. Did you have any conversations with Cathy Todd
6 about the Union?

7 A Not that I recall.

8 Q Did there come a time when you had concerns about Cathy
9 Todd's performance?

10 A Yes, there was. Yes.

11 Q Prior -- when -- when did you first have concerns about
12 her performance?

13 A I had concerns about her over the past couple of years
14 with her attitude and her abrasiveness in the way she spoke to
15 some of the -- the neighbors -- the patients. I had patients
16 come to me. And that -- that's how that would happen. And try
17 to address it with her. It didn't go very well.

18 Q You said you tried to address it with her. Do you recall
19 specific instances when you tried to address this with her?

20 A Yes, I do. There are a couple of instances.

21 Q When was the first incident, to the best of your
22 recollection, that --

23 A To the best of my recollection, it was probably around I'm
24 going to say maybe 2018. I'm not -- not quite sure. But it
25 was with one of the neighbors. And we actually attempted to do

1 a mediation with her, had the social worker present. And we
2 had people from the step 1, as well, because this patient had
3 concerns about her. And we were trying to get things open --
4 out in the open that maybe it was the patient, the neighbor
5 herself seeing it incorrectly, or maybe Cathy needs to just see
6 for herself that maybe she could just maybe turn her -- her
7 approach around and maybe things would be resolved.

8 Q And how did that mediation go?

9 A It didn't go well. She was very angry. She didn't -- she
10 tried to hide that anger during that meeting. But afterwards,
11 she was very, very angry with me for doing that. And actually,
12 that neighbor ended up being transferred off the floor because
13 it just -- it wasn't a good -- a good thing.

14 JUDGE SANDRON: Was -- was there any memorandum made of
15 the results of the mediation?

16 THE WITNESS: I believe that would be in one of the
17 patient's charts that -- that a mediation had occurred.

18 JUDGE SANDRON: But there was -- there was nothing that
19 the company kept as far as the management records?

20 THE WITNESS: Not that I'm aware of.

21 Q BY MS. LANOUE: You said that there were a couple of
22 times. When is the next time you recall attempting to address
23 her behavior with her?

24 A The next time -- there was an instance probably in --
25 well, let's go -- I think June I had given her her evaluation.

1 And the evaluation from my recollection, I had given her some
2 things that she needed to work on with I believe her attitude
3 and just the way her -- the way -- the way she was outspoken.
4 She tended to be -- she can be very angry and explosive and
5 very reactive instead of proactive. So I tried to attempt
6 that -- to address that with her.

7 JUDGE SANDRON: And June 2019 -- that was June --

8 Q BY MS. LANOUEETTE: What year?

9 A Yeah, it was about 2019.

10 Q And Ms. Pope, I'm going to attempt to show you what has
11 been marked as Exhibit 57.

12 A Okay.

13 Q Just a sec.

14 JUDGE SANDRON: Yeah. I believe that was received
15 already.

16 MS. LANOUEETTE: Okay.

17 JUDGE SANDRON: But you can show it to her.

18 Q BY MS. LANOUEETTE: Then I'm going to show you Exhibit 57.

19 A Okay.

20 Q And ask -- sorry, it takes me a minute. I'm not as good
21 as Ms. Hammond. If you recognize this document. And I will
22 scroll very slowly.

23 A Yes.

24 Q When -- when -- approximately when did you present Exhibit
25 57 to Ms. Todd?

1 A Sometime in the month of June 2019.

2 Q And what do you recall about the conversation when you
3 presented it -- where was this conversation when you presented
4 it to her?

5 A In my -- it was in my office. And that did not go well.
6 She got very angry about it. She was very, very angry.

7 JUDGE SANDRON: All right. Well, why don't you just tell
8 us what --

9 Q BY MS. LANOUEETTE: What did she --

10 JUDGE SANDRON: -- what was said.

11 Q BY MS. LANOUEETTE: What did you say and what did she say,
12 to the best of your recollection?

13 A To the best of my recollection, she just -- she didn't --
14 I -- I can't -- I can't even -- I can't even tell you exactly
15 what my words were. I just remember her reaction being very
16 angry about it.

17 JUDGE SANDRON: Do you remember --

18 Q BY MS. LANOUEETTE: Did you --

19 JUDGE SANDRON: -- do you remember any -- any specifics
20 that she said? I mean, you said she was very angry. Did she
21 tell you about what she was angry?

22 THE WITNESS: I can -- I cannot be 100 percent certain.
23 But I want to say it was about her attitude.

24 Q BY MS. LANOUEETTE: What led you to believe she was angry?

25 A She elevated her voice. She spoke very loudly at me.

1 Q How --

2 A And she -- and -- and her body language. She would slam
3 things around. And you -- and I knew she was angry.

4 Q How did that meeting end?

5 A She took a copy of it. And then she -- she just walked
6 away.

7 Q When was the next time you had an opportunity to discuss
8 Ms. Todd's behavior or attitude?

9 A Sometime in early October.

10 Q Of what year?

11 A Of 2019. It was in regards to one of our neighbors on the
12 floor. She yelled at her and told her to sit down in that
13 chair and don't move.

14 Q And how did you --

15 A And --

16 Q -- know that she had done that?

17 A I heard her.

18 Q Okay. Who was present during the conversation you had
19 with Ms. Todd?

20 A Heather Britton-Schrager. She's the social worker.

21 Q And I believe her spelling is in the record.

22 JUDGE SANDRON: Yes.

23 Q BY MS. LANOUE: Was anyone else present?

24 A Jennifer Candee, the assistant director of nursing.

25 MS. LANOUE: And I believe that is also in the record.

1 But in case Candee is not, it is C-A-N-D-E-E.

2 JUDGE SANDRON: Thank you.

3 Q BY MS. LANOUEETTE: And what did you say to Ms. Todd to
4 start the meeting?

5 A We had discussed what was heard. And she adamantly denied
6 that that was true, that she did not try to restrict her
7 movement -- her -- this patient's movement. And we reiterated
8 to her that it's in her plan of care that you cannot -- you
9 cannot make her sit down. She has the right to move around and
10 go where she wants to be. So she -- that ended very, very
11 un -- not well. You know, she got very angry and slammed
12 things. And I believe she walked out of that meeting. I was
13 going to write her up. I had the write-up. But due to her
14 extreme response, I was not able to. I had it in my office.
15 And then that disappeared.

16 JUDGE SANDRON: Did you have that -- did you talk with her
17 in your office about the incident?

18 THE WITNESS: No. We talked -- I talked with her in the
19 back room, which is just a couple of doors down from my office.

20 Q BY MS. LANOUEETTE: And when you say that the write-up you
21 had done disappeared, what do you mean?

22 A It -- it left my office somehow. It was there one day and
23 gone the next.

24 Q Okay. I -- I'd like to show you now what has been marked
25 as Respondent's 1. And ask if you recognize it. And for you,

1 there is a binder of documents on the table next to you in the
2 room you're in.

3 A Oh, okay.

4 Q Okay. Do you see the tab that says 1?

5 A Yes, I do. I see that.

6 Q Do you recognize the document that has been marked as
7 Respondent's Exhibit 1?

8 A Yes, I do.

9 JUDGE SANDRON: And I think that's been received, as well.

10 MS. LANOUE: Received as Exhibit 1.

11 THE WITNESS: Uh-huh.

12 Q BY MS. LANOUE: How did this come about?

13 A This statement came about to the best of my recollection
14 at the moment, something had happened at the nurse's station,
15 and this CNA was there. And it was something that was said by
16 Cathy. And this CNA, she rolled her eyes up and -- and she --
17 you know, and blew down with her -- with her breath. So that
18 led me -- I need to go speak to her privately, which is what I
19 did. And this is what came out of it, all of these things.
20 She was very upset. And I asked her please, you need to write
21 a statement about this.

22 Q So when you first saw the -- the CNA speaking to Ms. Todd,
23 could you hear what they were talking about?

24 A Say that again, please.

25 Q When you first saw the CNA talking to Ms. Todd, where were

1 they?

2 A I don't know if the CNA was talking to Ms. Todd. But
3 something had happened at the nurse's station. And it might
4 have been one of the patient's present and her remarks,
5 something she said about it just -- I could tell that there
6 was -- something wasn't right, which is what made me speak to
7 her.

8 Q So you saw something wasn't right with the CNA?

9 A Yes.

10 Q Did you not -- did you know at that time that it related
11 to Ms. Todd? Or -- or did you not know what it was about?

12 A I had an inkling it probably was about Ms. Todd just
13 because she was the only other one present there staff-wise.

14 Q Where did you speak to the CNA?

15 A That I don't recall.

16 Q When did you speak to her?

17 A I -- that very, very day. I know I took her aside, that
18 there was nobody else around that they could hear our
19 conversation.

20 Q And what did you say to her?

21 A I -- from my recollection, I was -- I asked her what --
22 what was that about, I could tell you're upset about something,
23 you need to tell me what is going on. And that's when she just
24 blurted all these things out and how upset she was with Cathy.

25 Q And at that point, what did you ask her to do?

1 A I asked her to write it up in a statement.

2 Q Okay. What did you do when you received Exhibit R-1?

3 A I brought it -- I brought it to either Patrick or Carolyn.
4 I don't recall. But I brought to someone in administration.

5 Q Okay. Was that the only thing you gave them at that time?

6 A I am not sure. I don't have 100 percent recollection.

7 Q Okay. In the -- were you asked to do anything else with
8 regard to an investigation regarding Ms. Todd?

9 A What had also happened is I had also spent a few evenings
10 doing the evening med pass and as the nurse on the floor, as
11 there was no coverage at that time. So I stayed and I did the
12 med pass. And I recall that during my med pass at 5:00, I
13 had -- the neighbors -- the patients were asking me why are you
14 giving me meds at 5:00, Cathy never does. And then I had
15 neighbors as I'm in the dining room stopping and looking at me
16 looking for their 9:00 meds. I was like, you can't get your
17 meds now. And then at 7:00 -- did you want to say something?

18 Q I wanted to ask why couldn't they get their meds at 7 --

19 A Well --

20 Q -- their 9:00 meds?

21 A Because you have an hour before and an hour after. And
22 then 7:00 at night, half the unit would come to the desk
23 because they're very independent people, wanting their
24 medications and their snacks, and getting very angry because
25 I'm not going to do that. I was like, guys, listen here, I

1 can't start my med path until 8:00. Well, Cathy gives it all
2 to us. They were very angry about it, very upset.

3 Q I want to show you what's been marked as Exhibit R-4. And
4 ask if you recognize it.

5 A In the book? No?

6 Q You can look in the book or you can look on the screen.

7 A Yeah. Okay.

8 Q Do you recognize Exhibit R-4?

9 A Yes, I do.

10 Q What do you recognize it to be?

11 A I recognize it to be my statement.

12 Q Okay. And how did you come to make Exhibit R-4?

13 A After doing the med pass, I realized that there was
14 something more to what was going on. Then we started -- I
15 started talking to some of the neighbors. I had one neighbor,
16 like it says in my statement, approach. She approached me, I
17 guess that would be the day before in November, that Cathy had
18 denied her a phone call at 6:30 and said she's busy, come back
19 later. And --

20 JUDGE SANDRON: Excuse me. You can't look at the document
21 while you're --

22 THE WITNESS: Oh, I'm sorry.

23 JUDGE SANDRON: I mean --

24 Q BY MS. LANOUE: Just -- just how -- why did you make
25 this -- this document? That's --

1 A I made this document because of the things that I was
2 uncovering during this period of time.

3 Q Okay. Who did you give Exhibit R-4 to?

4 A It would be either Patrick or Caroline. Probably Patrick.

5 Q Did you make R-4 in the ordinary course of your duties as
6 a unit manager?

7 A You mean, write statements up like this?

8 Q Yes.

9 A Yes, I did.

10 Q And -- and did you make this statement in your role as a
11 unit manager?

12 A Yes, I did.

13 MS. LANOUE: Offer Exhibit R-4.

14 JUDGE SANDRON: Any objections? Okay. Hearing no
15 objections, the document is received.

16 **(Respondent Exhibit Number 4 Received into Evidence)**

17 Q BY MS. LANOUE: What other involvement did you have in
18 the investigation regarding Cathy Todd?

19 A Just gathering the information that I had, whatever the
20 neighbors had come to me, whatever I had found. That was my
21 involvement.

22 Q You mentioned medication path. I want to show you what's
23 been marked Exhibit R-7. And ask if you recognize it.

24 A Yes, I do.

25 Q And -- and what do you recognize that to be?

1 A That is the result of my investigation with medication --
2 with the medication cart.

3 Q When did you make that document?

4 A That would have been November the 14th, 2019.

5 Q And what did you do with it when it was made?

6 A That, too, I had handed into administration. And again,
7 probably Patrick.

8 Q Did you make this document in the ordinary course of your
9 duties as a unit manager at Northeast Center?

10 A Yes. I would have. Yes.

11 MS. LANOUE: Offer Exhibit R-7.

12 JUDGE SANDRON: Any objections?

13 MS. TUMINARO: No objection.

14 JUDGE SANDRON: All right. Hearing none, the exhibit is
15 received.

16 **(Respondent Exhibit Number 7 Received into Evidence)**

17 Q BY MS. LANOUE: Did -- did there come a time that you
18 were asked to sit in on interviews with staff regarding this
19 investigation?

20 A With the social -- social worker. We had interviewed one
21 specific patient together, that I recall.

22 Q What -- who -- who is the social worker you're referring
23 to?

24 A Heather Britton-Schrager.

25 Q And can you tell us the first initial of the first name of

1 the patient that you interviewed together?

2 A The first initial is A.

3 Q When to the best of your recollection, did that interview
4 occur?

5 A Probably November of 2019.

6 Q And what did A -- do you remember why you were asked to
7 interview A together?

8 A I want to say probably because I asked -- I asked Heather
9 to come because we needed to talk about this. Neighbor A had
10 come to me and told me that she's not getting her medications
11 at night.

12 Q Okay.

13 A She's -- do you want me to go on?

14 Q So Neighbor A had come to you with a complaint?

15 A A complaint. Yes.

16 Q And -- and what did you do when that complaint came to
17 you?

18 A I called Heather Britton-Schrager.

19 Q And why did you call Heather -- or Ms. Britton-Schrager?

20 A Because this could have -- this is rising to neglect, and
21 it needs to be addressed with the social worker and myself.

22 Q And what did you and Ms. Britton-Schrager do?

23 A We turned that information in, as well.

24 Q I want to show you what's been marked as Exhibit R-8. And
25 ask if you recognize the document contained in Exhibit R-8?

1 A Yes, I do.

2 Q And I'm going to let her scroll through first. And then
3 we'll -- looking at the first page of Exhibit R-8, is that your
4 signature at the bottom of the page?

5 A That is my signature.

6 Q The -- the date of this document is listed there as being
7 in 2018.

8 A Yeah. March 5th, 2018.

9 Q Do you know when you made this document?

10 A That would be on March 5th, 2018.

11 Q What did you do with this document when you made it
12 originally?

13 A That was handed in.

14 Q To whom?

15 A Probably, to my recollection, Kathy McCormick.

16 Q Did you hear anything back after you advised Ms. McCormick
17 about Exhibit R-8, page 1?

18 A The only thing that I can recall is Kathy saying to me you
19 need to move her. And that's as far as it ever went.

20 Q When --

21 JUDGE SANDRON: Wait, wait. The her -- who is the her to
22 move?

23 THE WITNESS: Oh, to move Cathy Todd off the unit to
24 another unit.

25 JUDGE SANDRON: Okay. Thank you.

1 Q BY MS. LANOUEETTE: When the investigation in 2019
2 occurred, what did you do with this statement?

3 A The one -- the 2019 statement?

4 Q The 2018 statement. What did you do with it when the
5 investigation in 2019 occurred?

6 A That was -- it should have already been there. I'm -- I
7 don't recall. I -- it should have already been up in the --
8 wherever it should have been. I don't know where it went to.

9 Q After you and Ms. Britton-Schrager interviewed the
10 neighbor you had concerns about, what if anything did you do
11 with that information?

12 A Turned that in to the appropriate administration.

13 Q And -- and who was that?

14 A I'm getting a little confused. Which one are you talking
15 about?

16 Q Who -- when you say the appropriate person in
17 administration, who are you referring to?

18 JUDGE SANDRON: Yeah. I think -- I think the witness
19 wants to know which of the documents, right?

20 MS. LANOUEETTE: Oh.

21 THE WITNESS: Yes.

22 MS. LANOUEETTE: I -- I don't know that there was a
23 document. Ms. Pope testified she and Ms. Britton-Schrager
24 interviewed a patient named --

25 JUDGE SANDRON: Understand.

1 MS. LANOUEETTE: -- and then that's what she did with that
2 information that she learned during the interview.

3 JUDGE SANDRON: Understand.

4 MS. LANOUEETTE: And she said she turned it in to the
5 appropriate administrator. I was just asking her who did she
6 tell.

7 JUDGE SANDRON: I see.

8 THE WITNESS: Yeah. It would be -- if Heather and I did
9 that investigation together, Heather would take that. And she
10 would be the one to take it to the appropriate person.

11 Q BY MS. LANOUEETTE: Okay. Thank you. As a unit manager --

12 JUDGE SANDRON: Oh, did -- did you want to offer
13 Respondent's Exhibit 8? I don't think it was admitted.

14 MS. LANOUEETTE: I was going to wait, Your Honor, until Ms.
15 Britton-Schrager testifies regarding the other two pages
16 because I don't know that this witness can lay foundation for
17 them.

18 JUDGE SANDRON: All right. That's fine.

19 Q BY MS. LANOUEETTE: As a unit manager, did you have an
20 opinion what should happen with regard to Ms. Todd?

21 A I did have an opinion.

22 Q And -- and did you share that opinion with anyone in
23 administration?

24 A I was not asked. So no.

25 Q You indicated you don't recall any conversations with Ms.

1 Todd about the Union. Did you know anything about her support
2 or activity with regard to the Union campaign?

3 A She never came face-to-face to say. But it was hearsay in
4 the facility that she was a Union supporter.

5 Q Did her support of the Union play any role in your -- your
6 bringing this incident to administration?

7 A Absolutely not.

8 Q Why did you report these incidents to administration?

9 A Because what she did was wrong. It was wrong. It was a
10 violation of -- of the -- of the patient's rights.

11 MS. LANOUE: I have no other questions.

12 JUDGE SANDRON: Cross-examination?

13 MS. PENDER: Yes. Thank you, Your Honor. We can stop
14 sharing the screen I think at this point. Thank you.

15 **CROSS-EXAMINATION**

16 Q BY MS. PENDER: Hi, Ms. Pope. Good afternoon. My name is
17 Alicia Pender. I am the counsel for the NLRB here today. I
18 just have a couple of questions for you. If at any time you
19 don't understand my question or you can't hear me because of
20 the Zoom, let me know. I'll rephrase it or ask it again, okay?

21 A Okay.

22 Q You were the unit manager of NRP4 for 15 years, you
23 testified?

24 A Yes.

25 Q Have you ever been unit manager of any other units at the

1 facility?

2 A No.

3 Q What is the LPN MDS coordinator, your current position?

4 A It's minimum data set. It's forms that are submitted to
5 CMS. They are -- they're, like, report cards for each -- each
6 of the individual patients.

7 Q Is that -- I guess, is -- was -- was going to the LPN MDS
8 coordinator, was that a lateral move? Was it a promotion,
9 demotion? How did you think of that -- that move?

10 A I thought of it more of a promotion, really.

11 Q Okay.

12 A A new -- new avenue of learning.

13 Q Right. I understand. You said that you were involved in
14 the hiring of CNAs and LPNs. Was that as unit manager of NRP4?

15 A Yes.

16 Q What role did you play?

17 A I would interview prospective CNAs or LPNs, not just for
18 my unit, but we would all take turns as unit managers and we
19 would interview people for prospective staff to see if we
20 felt -- felt that they would be a -- a good fit for our
21 facility.

22 Q In your time as unit manager of NRP4, did you issue write-
23 ups and disciplines to LPNs and CNAs?

24 A Yes.

25 Q And when you did that, if an employee refused to sign the

1 write-up, would you still put it in their file?

2 A Yes, I would. I would write refused to sign, and offer
3 them the opportunity for a copy of it.

4 Q And if an employee refused to even talk to you about it,
5 would you still put it in their file?

6 A Yes.

7 Q But the write-up that you -- in your statement that you
8 attempted to give to Cathy Todd did not go in her file, right?

9 A No. She did not know about it. That's why.

10 Q And you said that statement disappeared?

11 A Correct. Or that write-up, rather, disappeared.

12 Q You didn't write another one?

13 A No.

14 Q And you didn't attempt to give it to her at a different
15 point?

16 A No.

17 Q You testified that when you were NRP4 unit manager, your
18 schedule was eight hours a day, but you -- often it varied and
19 could be more?

20 A Uh-huh.

21 Q And you testified that sometimes you would come early or
22 stay late to touch base with your staff on different shifts,
23 right?

24 A Uh-huh.

25 Q Were you touching base with staff other than the people

1 that worked on NRP4?

2 A No.

3 Q You were telling us earlier that when Carolyn Carchidi
4 became director of nursing, she was more approachable than
5 Kathy McCormick had been?

6 A Yes.

7 Q And you had brought a concern to her about a -- about an
8 LPN?

9 A Yes.

10 Q And you believe that Carolyn Carchidi responded
11 appropriately to that concern?

12 A Yes.

13 Q And that LPN was Cathy Todd, right?

14 A Yes.

15 Q Did you bring any concerns about any other employees to
16 Carolyn Carchidi?

17 A Not at that time. No.

18 Q Did -- have -- had you ever done that?

19 A Not to my recollection.

20 Q When we were talking about -- when you were talking about
21 presenting Cathy Todd with the evaluation in June 2019 --

22 A Uh-huh.

23 Q -- you mentioned that she slammed stuff around?

24 A Her -- her body language was very tense. She would just,
25 you know, abruptly, like that, you know. That kind of thing.

1 You know, just --

2 Q When you -- when -- so because the court reporter is
3 recording, you have to explain in words. So do you mean that
4 she slammed her arms down?

5 A She slammed her arms down. Yes.

6 Q So she didn't pick up a physical object and slam it down?

7 A No. She did not.

8 Q And Cathy Todd signed that evaluation that you presented
9 to her in June 2019?

10 A Yes, she did.

11 Q When you -- when you discussed with Ms. Lewinson her
12 complaint --

13 A Uh-huh.

14 Q -- did you ask her what work-related issues Cathy Todd
15 spoke about in front of neighbors?

16 A I don't recall.

17 Q You don't recall asking her, or you don't recall what she
18 said, if anything?

19 A Yeah. I don't recall what she said.

20 Q But did you ask her?

21 A Yes, I did.

22 Q What time do the neighbors on NRP4 get snack?

23 A 8 p.m.

24 Q Any other time of day?

25 A Not usually. No.

1 Q Have you ever heard complaints from neighbors that they
2 don't get enough snacks?

3 A Not that I recall.

4 Q Have you ever had complaints -- or has -- has any staff
5 member ever come to you and said the neighbors feel they don't
6 get enough snacks?

7 A Yes.

8 Q Did Cathy Todd ever bring that concern to you?

9 A Yes.

10 Q In your -- in R-7, which I think you should have. And I
11 can show -- I can put it on -- on the share screen.

12 A Okay.

13 Q Okay. Can you see my screen?

14 A Yes.

15 Q Okay. Toward the bottom, you noted that you had never
16 seen Cathy pass any medications before 5 p.m.; is that right?

17 A That's correct.

18 Q Did you ever talk to her about that?

19 A No. I did not.

20 Q Did you ever tell her that she needed to do that?

21 A No. I did not.

22 Q Okay. I'm going to show you one more. I'm looking at R-
23 8. I'm going to also share it on my screen for you. Can you
24 see my screen?

25 A Yes.

1 Q Okay. This is your March 5th, 2018 statement?

2 A Yes.

3 Q And you said you had handed that to Kathy McCormick when
4 you made it?

5 A Yes.

6 Q Did it write Cathy Todd up in response to this complaint?

7 A No. Or not that I recall, I should say.

8 Q Okay. Okay. Okay. I've got one more I'm going to show
9 you. It's R-7, which is your November 14th, 2019 statement.

10 A Uh-huh.

11 Q And we looked at this before. I'm just going to go back
12 to it a bit. Hang on one second. No, that's not what I'm
13 going to show you. All right. I'm going to show you R-4,
14 which is the November 13th statement. Can you see that?

15 A Yes.

16 Q Okay. And you start by saying earlier in the month of
17 October 2019, and you recount where Cathy Todd apparently
18 raised her voice to a neighbor?

19 A Yes.

20 Q And you informed Kathy McCormick of what transpired. But
21 you weren't able to give Cathy Todd the write-up?

22 A Yes.

23 Q And then in the paragraph below you said, A approached you
24 because she was denied her bedtime medication because she
25 forgot to come to the nurse's station?

1 A Yes.

2 Q Did you -- did you write up Cathy Todd when -- when you
3 learned about that?

4 A No. That was when with Heather Britton-Schrager we had
5 taken her complaint and forwarded it up above, as we should
6 have.

7 Q Okay. So it wasn't your responsibility to do a write-up
8 at that point?

9 A Not at that point because that -- to me, that's neglect,
10 not giving medications. And that really needs to be further
11 investigated.

12 Q I understand. Ms. Pope, you testified that at some point
13 you heard through the building that Ms. Todd was a union
14 supporter, right?

15 A Right. Yes.

16 Q When did you hear that for the first time?

17 A That I don't recall.

18 Q Was it prior to November 13th of 2019?

19 A I would say yes.

20 Q And you testified that you -- you did have an opinion
21 about what -- what should happen in response to the complaints
22 about Cathy Todd in -- in November of 2019?

23 A Yes.

24 Q But you testified you were not asked to share that opinion
25 with the administration?

1 A Correct. Yes.

2 Q So no one asked for your recommendation on -- on how to
3 handle it?

4 A Sorry. No.

5 MS. PENDER: Thank you. I have nothing further, Your
6 Honor.

7 JUDGE SANDRON: Ms. Tuminaro?

8 MS. TUMINARO: I -- I just have a few questions.

9 **CROSS-EXAMINATION**

10 Q BY MS. TUMINARO: Good afternoon, Ms. Pope. You -- you
11 were the unit manager on NRP4 for -- for many years. I think
12 you said 15?

13 A Yes.

14 Q And how long did Cathy Todd work on NRP4?

15 A Maybe two -- maybe two years. I'm -- I'm not really sure.
16 Each year --

17 Q So --

18 A -- kind of blends into the other, so.

19 Q Say -- say that one more time. I didn't hear you.

20 A I said each year blends into the other. It's very
21 difficult to determine.

22 Q Okay. Do -- do you recall how -- was it -- was her time
23 on NRP4 continuous, or did she move between units?

24 A Her time at that time on NRP4 was continuous. She moved
25 in between many units before that.

1 Q Okay. And was she on NRP4 for -- for more than two years?

2 A That's a possibility. Yes.

3 Q Okay. So you don't recall how long you were her
4 supervisor?

5 A I do not. No.

6 Q Okay. I think you mentioned that as the unit manager,
7 you're responsible for the care plans and overseeing and
8 supervising the CNAs and the LPNs; is that right?

9 A Yes.

10 Q Okay. Now, around the beginning -- beginning in -- sorry,
11 let me rephrase that. In 2019, there was a staffing crisis at
12 Northeast, correct?

13 A Yes.

14 Q There were many vacancies in the nursing department in
15 particular, correct?

16 A Yes.

17 Q And do you recall the nursing staff coming to you and
18 expressing concerns about short-staffing?

19 A Not that I can really recall.

20 Q Okay. But -- but you were -- you were -- I think you said
21 that one evening you were passing meds on NRP4 because of
22 short-staffing, correct?

23 A That is correct.

24 Q Okay. Do you recall any of the nursing staff expressing
25 concerns that because they were so short-staffed, they were

1 having trouble showering the residents, the neighbors?

2 A No.

3 Q You don't recall that?

4 A No.

5 Q Ms. Pope, do all medications get passed at the same time,
6 or does it depend on when the doctor prescribes them?

7 A It depends on when the doctor prescribes them.

8 Q So I think you mentioned that there was a complaint from
9 Neighbor A in October of 2018; do you recall that?

10 A 2018?

11 Q October 5th of 2018.

12 MS. TUMINARO: Could we show the witness --

13 JUDGE SANDRON: Yes.

14 MS. TUMINARO: -- R-8, please?

15 Q BY MS. TUMINARO: Ms. -- Ms. Pope, can you see that?

16 A Yes, I can.

17 Q Okay. And was this -- so this is March of 2018. Does
18 this refresh your recollection of whether there was a complaint
19 from Neighbor A?

20 A Okay.

21 Q Do you recall -- does this look fam -- this is your
22 statement, correct?

23 A Yes.

24 Q Okay. Does this recall your recollection about this
25 incident?

1 A Very vaguely. Vaguely, because I'm not sure who A is at
2 this point.

3 Q So you don't recall which Neighbor A that was?

4 A I kind of think I do know, but I'm not -- well, I don't
5 want to say 100 percent, yes.

6 Q Are there multiple neighbors with the first letter initial
7 A on NRP4?

8 A Yes, there were. There were.

9 Q Okay.

10 A Yeah.

11 Q Was the -- I think you said that in response to this
12 memorandum that you wrote, Kathy McCormick said you needed --
13 that they -- that Northeast should move Kathy off the unit; is
14 that right?

15 A That's right.

16 Q And that never happened. Kathy was never moved off the
17 unit, correct?

18 A That is correct.

19 MS. TUMINARO: Can we show the witness R-8?

20 MS. HAMMONDS: It is R-8.

21 MS. TUMINARO: Oh, sorry. R-7. Okay. Sorry. Can we
22 show her R-4?

23 Q BY MS. TUMINARO: Ms. Pope, in this statement here, R-4,
24 you are memorializing some information you obtained from --
25 from Resident A, correct?

1 A Yes.

2 Q Is this the same Resident A who was at issue in the
3 October 2018 statement I just showed you?

4 A I would believe, no.

5 Q You think it's a different one?

6 A It -- it is.

7 Q It is a different one, okay. Ms. Pope, does the LPN MDS
8 coordinator get paid more than your previous position?

9 A No.

10 Q What were your regular hours of work? I know you said you
11 stayed late, but what were your regular hours of work when you
12 were the unit manager during the fall of 2019?

13 A For me anytime between 7, 8:00 in the morning and stay
14 till 4 or 5:00 in the afternoon.

15 Q And what were Cathy Todd's hours during that period of
16 time?

17 A It would be 3 -- 3 p.m. till 11 p.m.

18 JUDGE SANDRON: Do you want to close the document, I don't
19 think you need it.

20 MS. TUMINARO: You can close the document.

21 Q BY MS. TUMINARO: Just a couple more questions. Ms. Pope,
22 how many neighbors are on NRP4?

23 A There were 40.

24 Q Forty. And how many LPNs work on NRP4?

25 A One.

1 Q And so on one shift, there's one LPN for 40 neighbors?

2 A Yes.

3 MS. TUMINARO: I have nothing further.

4 JUDGE SANDRON: Ms. Joslin, any questions?

5 MS. JOSLIN: Yes, Your Honor, just a few.

6 **CROSS-EXAMINATION**

7 Q BY MS. JOSLIN: I am Lisa Joslin. I am the attorney for
8 Tara Golden in this matter. I'm just going to ask you a few
9 follow-up questions.

10 A Sure.

11 Q Now, with respect to the time period that you are unit
12 manager, you did not have any authority to hire employees on
13 your own; is that right?

14 A Yes, I did have authority to hire employees on my own.

15 Q You ma -- you could make the decision to hire employees?

16 A Yes, I could.

17 Q And who gave you that authority?

18 A Had that authority for years.

19 Q And did you, in fact, hire employees as a unit manager?

20 A Yes, I did.

21 Q Did you have to discuss a hire -- potential hire with any
22 other employees before you did so?

23 A No, they were screened first with HR, and then I would
24 interview them. And if I felt they were a good fit, I would
25 offer them the position. If I felt I needed more information,

1 I would hand it over and ask -- have another unit manager also
2 interview that person.

3 Q When is the last time you can recall hiring an employee as
4 the unit manager?

5 A Oh man. It would -- it would be sometime in 2019. That
6 I -- that's as specific as I can get.

7 Q Which employee did you hire in 2019?

8 A I couldn't even tell you the name. I've hired many CNAs.

9 Q Did you have to discuss your intent or your desire to hire
10 someone with any other employee or administrator before you did
11 so?

12 A No.

13 Q So you didn't need the director of nursing's approval for
14 that?

15 A No.

16 Q How about the administrator?

17 A No.

18 Q Okay. Did you have the authority to fire someone on your
19 own?

20 A No.

21 Q Who had that authority?

22 A That would be the director of nursing and human resources,
23 or the administrator.

24 Q Okay. How about suspension, did you have the authority to
25 suspend an employee on your own?

1 A Suspended someone pending investigation, yes, you could.

2 Q Okay. And you didn't have to run that by HR or
3 administrator or director of nursing first?

4 A If it -- if there was nobody in the facility, then yes.
5 If there was somebody in, I would absolutely speak to them
6 first.

7 Q Okay. You've -- well, isn't it true that you attended
8 some meetings with the consultants in fall of 2019 regarding --

9 MS. LANOUEETTE: Objection. Outside the scope of direct.
10 Your Honor, we can't hear you.

11 JUDGE SANDRON: Yes, I -- I don't think she was asked any
12 questions about that on direct, was she?

13 Q BY MS. JOSLIN: You mentioned that you had heard in the
14 facility, I think you called it through hearsay, that Ms. Todd
15 was a pro-union employee or at least was pro-union; is that
16 right?

17 A Yes.

18 Q Didn't you hear that at a meeting with consultants?

19 A Not that I recall.

20 Q You attended those meetings, though; is that right?

21 A Yes.

22 Q Did you ever hear that Tara Golden might be pro-union?

23 MS. LANOUEETTE: Objection. Outside the scope of direct.

24 JUDGE SANDRON: Well, I think if it's going --

25 MS. LANOUEETTE: That's not where she heard it.

1 JUDGE SANDRON: Well, I -- I think on cross-examination
2 since the witness said she had heard it, Ms. Joslin can inquire
3 where --

4 MS. LANOUEETTE: She said she heard Cathy Todd was. She
5 did not say anything about what she heard or did not hear about
6 Ms. Golden.

7 JUDGE SANDRON: Oh, you asked her about Ms. Golden.

8 MS. JOSLIN: That was my second question that was cut off
9 by counsel.

10 JUDGE SANDRON: I think that is beyond the scope of the
11 direct. So I'll sustain the objection.

12 Q BY MS. JOSLIN: What led to your move to your current
13 position?

14 A I was offered this position.

15 Q Who offered it to you?

16 A Patrick.

17 Q And did you indicate that you were interested in the
18 position?

19 A Yes, I did.

20 MS. JOSLIN: That's all I have, Your Honor.

21 JUDGE SANDRON: Ms. Lanouette, redirect?

22 MS. LANOUEETTE: No, Your Honor.

23 JUDGE SANDRON: Okay. Thank you, Ms. Pope. Your -- your
24 testimony is done. Thank you.

25 THE WITNESS: Thank you. Okay.

1 JUDGE SANDRON: All right. I think we're -- we're ready.
2 I would just note the witness has a mask on, so we can't see
3 her whole face.

4 MS. LANOUEETTE: Ms. Boice, you can remove your mask.
5 You're alone in Mr. Weir's --

6 JUDGE SANDRON: Oh, okay.

7 MS. BOICE: Sorry.

8 MS. LANOUEETTE: Judge, we had to --

9 JUDGE SANDRON: Now we -- now we can see her.

10 MS. LANOUEETTE: -- move things around to comply with
11 department (indiscernible, simultaneous speech).

12 JUDGE SANDRON: Yes, yes. Well, we certainly want, you
13 know, safety protocols to be observed. So you have your next
14 witness. Do you want to identify her?

15 MS. LANOUEETTE: Yes. Respondent calls Robin Boice. Robin
16 is R-O-B-I-N, Boice, B-O-I-C-E.

17 JUDGE SANDRON: Hi. If you'll please raise your right
18 hand.

19 Whereupon,

20 **ROBIN BOICE**

21 having been duly sworn, was called as a witness herein and was
22 examined and testified as follows:

23 JUDGE SANDRON: Okay. Please -- you can lower your hand.
24 If you could please -- we -- we have your name already in the
25 record and the spelling. So if you could please provide us

1 with an address, either residence or work.

2 THE WITNESS: 79 Cambridge Drive, Red Hook, New York,
3 12571.

4 JUDGE SANDRON: Thank you.

5 **DIRECT EXAMINATION**

6 Q BY MS. LANOUEETTE: Ms. Boice, what is your -- who is your
7 current employer?

8 A Northeast Center.

9 Q And what is your current position at Northeast Center?

10 A Assistant director of nursing.

11 Q When did you become assistant director of nursing?

12 A August of 2020.

13 Q Before August of 2020, what position did you hold at
14 Northeast Center?

15 A Unit manager.

16 Q For which unit?

17 A The vent unit.

18 Q How long were you the unit manager on the ventilator unit?

19 A Approximately, four years.

20 Q Before you were the unit manager on the ventilator unit,
21 what position did you hold at Northeast Center?

22 A Unit manager of NRP1.

23 Q How long were you the unit manager of NRP1?

24 A Maybe around a year and a half to two years.

25 Q Before you were the unit manager of NRP1, what position

1 did you hold?

2 A Unit manager of NBI.

3 Q How long were you the unit manager on NBI?

4 A Approximately two years.

5 Q Okay. And before you were the unit manager on NBI, what
6 position did you hold?

7 A I didn't have another position other than at another
8 facility.

9 Q Okay. Thank you. What degree do you hold?

10 A I have an associate's in nursing.

11 Q And are you licensed?

12 A I am.

13 Q How are you licensed?

14 A For the State of New York as an RN.

15 Q Ms. Boice, in 2019, what was the role of a unit manager?

16 A The role of a unit manager was to overlook the entire unit
17 and be responsible for all staff on the unit and all neighbors
18 on that unit.

19 Q On a day-to-day ba -- day-to-day basis what -- in 2019,
20 what did a unit manager do?

21 A You enter the unit first thing in the morning. You got
22 report from your night staff, your CNA and your night RN. And
23 then you made sure that you touch bases with your day staff
24 coming in. Made sure their assignments were correct. Made
25 sure that the auxiliary staff on the unit knew what their

1 assignments were. And then I would start my day after that
2 working on whatever MDS schedule there was; doing rounds on the
3 unit to make sure that the neighbors were safe and the staff
4 was doing what they were supposed to be doing.

5 If there was a code rainbow on the unit, which was a
6 behavior, then it was the responsibility of the unit manager to
7 be on the unit and observing how the code was being handled and
8 if everybody was doing what they were supposed to be doing, and
9 that it was an appropriate -- it was an appropriate move on
10 their part. And then to discuss with anybody after the code
11 was over if you noticed anything that was a little off as to
12 how the code was run.

13 Q Is the role of unit manager different when you are unit
14 manager of the NBI unit?

15 A You have more staff to oversee. You have the CSS staff,
16 the activities staff, plus the nursing staff to oversee.

17 Q Okay. And with regard to the CSS staff and activities
18 staff, what -- what is the role of the unit manager on NBI?

19 A To ensure that they were doing what they were supposed to
20 doing -- be doing, like, activities; had an assigned board of
21 what was supposed to be happening at different times during the
22 day. So you had to make sure that they were following the
23 schedule. And you had to make sure that the CSS staff --
24 excuse me -- who were there for safety reasons, were doing
25 their rounds and doing what they were supposed to be doing on

1 the unit.

2 Q Ms. Boice, I want to show you what's been marked -- or it
3 may be in evidence as Exhibit R-30. And ask if you recognize
4 it? And in the office where you're sitting is a large binder
5 of documents. If you turn to the tab 30 -- or you can look on
6 the screen. Ms. Hammonds will put it up there, as well.

7 JUDGE SANDRON: Yes, I think that was admitted.

8 MS. LANOUEETTE: Okay. Sorry, Your Honor. For some reason
9 I lost my exhibit list.

10 A Actually, I am familiar with this.

11 Q BY MS. LANOUEETTE: And -- and what do you -- what do you
12 recognize R-30 to be?

13 A It's the policy for the NBI unit.

14 Q BY MS. LANOUEETTE: If you scroll down to -- I'm sorry --
15 page -- page 3 of that document. And I believe it is paginated
16 3 of 10. At the top of that page, it says, NBI nurse unit
17 manager. Are you familiar with that paragraph in there, in
18 that policy?

19 A Yes.

20 Q Okay. Is that paragraph an accurate description of the
21 job of the unit manager on NBI?

22 A Yes.

23 Q Ms. Boice, I'm going to show you now what's been marked as
24 Respondent's Exhibit 24. And ask if you recognize that
25 document?

1 A Yes.

2 Q Okay. What do you recognize Exhibit 24 to be?

3 A It's given to all unit managers upon hire.

4 Q And does Exhibit 24 provide an accurate description of the
5 responsibilities of a unit manager, based on your experience?

6 JUDGE SANDRON: Do you want to go through the whole
7 document just so we can --

8 THE WITNESS: Actually, I don't have to. I'm just kind of
9 skimming just to make sure everything's on there and --

10 A Yes.

11 Q BY MS. LANOUEETTE: Ms. Boice, is -- is Exhibit 24 made in
12 the ordinary course of business at Northeast Center? And I
13 know that's a kind of difficult question. Is this document a
14 record -- a document that's made by Northeast Center?

15 A Yes.

16 Q And is this document kept at Northeast Center?

17 A Yes.

18 Q Do you know where it's kept?

19 A Normally, when you are -- when you're hired as a unit
20 manager, you sign it, and it goes in your file in human
21 resources.

22 MS. LANOUEETTE: Offer Exhibit R-24.

23 JUDGE SANDRON: Do you know how long it's been in effect?
24 There's no date at the end. Do -- do you know approximately
25 how long it's been in effect?

1 THE WITNESS: I can't answer that unless there's something
2 at the top -- the very top. And there's not.

3 No, keep --

4 MS. HAMMONDS: I'm at the top.

5 THE WITNESS: Yeah, there's no date on there. I don't
6 know when that was developed.

7 JUDGE SANDRON: Well, I think we have a little bit of a
8 problem then, if there's no way to know the date of this.

9 THE WITNESS: Well, I've been here since 2012 --

10 JUDGE SANDRON: Yes.

11 THE WITNESS: -- and I remember that from the time I came.

12 JUDGE SANDRON: All right. So that -- that was in effect
13 when you came. And to your knowledge, has it been changed
14 since you were there?

15 THE WITNESS: It has not been changed.

16 JUDGE SANDRON: Any objections?

17 MS. PENDER: No objection.

18 MS. JOSLIN: Your Honor, could I have a quick voir dire?

19 JUDGE SANDRON: Yes.

20 **VOIR DIRE EXAMINATION**

21 Q BY MS. JOSLIN: Ms. Boice, do you know for a fact that
22 this is the precise language that was in the document in 2012?

23 A It looks to be the same language.

24 Q Okay. But you haven't even read every word of it, right?
25 I mean, you're just briefly looking at it right now.

1 A I am briefly looking at it, but yeah. I mean, it -- it
2 doesn't look any different than -- than when it was first
3 introduced to me.

4 Q And -- and how was it introduced to you?

5 A When I was hired as a --

6 Q And when did you --

7 A -- unit manager. That's -- this is your job title. So
8 your job title, you -- you got assigned it, and you signed it
9 during orientation.

10 Q And to your knowledge, is every unit manager provided a
11 copy of this?

12 A I can't answer that.

13 MS. JOSLIN: Okay. I would object to it not having a date
14 or a timestamp. And I don't think this is the right witness to
15 provide the appropriate foundation.

16 JUDGE SANDRON: Ms. Pender?

17 MS. PENDER: I have no objection, Your Honor.

18 JUDGE SANDRON: And Ms. Tuminaro?

19 MS. TUMINARO: I'll join in -- in Ms. Joslin's objection.

20 JUDGE SANDRON: All right. The objection is overruled.

21 I'll admit the document.

22 **(Respondent Exhibit Number 24 Received into Evidence)**

23 Q BY MS. LANOUEETTE: Ms. Boice, in the nursing department --

24 MS. LANOUEETTE: And you can stop screensharing. I don't
25 believe I have any more documents to show her.

1 Q BY MS. LANOUEETTE: In the nursing department, who does the
2 evaluation of the nurses?

3 A The director of nursing is -- does the evaluations for the
4 unit managers, and the unit managers do the evaluations for
5 RNs, LPNs, and CNAs.

6 Q On their unit?

7 A On their units, yes.

8 Q And what is the process for those evaluations?

9 A It's an ongoing process. The evaluation they -- they give
10 you in advance. You get tardiness, absenteeism, whether or not
11 they have completed all of their education. And then you, as
12 the unit manager, base the rest of it on their work
13 performance, their camaraderie with their staff members.

14 Q And when you were a unit manager on NBI, did you complete
15 evaluations for your staff?

16 A Actually, no. We didn't do it back then. It was the
17 director of nursing who did them back then.

18 Q When did unit managers begin doing evaluations?

19 A When I went to vent unit is when they changed it over to
20 the unit managers doing the evaluations.

21 Q And I think you said --

22 JUDGE SANDRON: And when was that -- when was that, about?

23 THE WITNESS: Around 2016.

24 Q BY MS. LANOUEETTE: Who is responsible for discipline of
25 employees on the units?

1 A The unit managers are.

2 Q And what is the process for discipline?

3 A We start with a reeducation, and it will go all the way up
4 till termination. So you -- you would give your first -- your
5 first write-up would be a reeducation to the staff. And then
6 if things didn't change, then it would advance to a verbal,
7 then to a written, then to suspension, and then to termination.

8 Q And after you filled out the discipline form, what would
9 you do with it?

10 A The discipline form then would go to human resources.

11 Q Would you do anything else first?

12 A Well, you review it with the staff, and then they sign --
13 they have the right to sign and the right to comment in the
14 comment section.

15 Q Okay. Were you --

16 JUDGE SANDRON: Can I ask -- can I ask you a question? In
17 terms of -- does this -- this progressive discipline policy,
18 and it's probably in the document, but did that relate only to
19 rank-and-file employees or is it company-wide with respect to
20 all employees rank-and-file and supervisory?

21 THE WITNESS: All employees.

22 JUDGE SANDRON: Thank you.

23 THE WITNESS: You're welcome.

24 Q BY MS. LANOUE: Ms. Boice, did you have the authority
25 to skip steps in the progressive discipline policy?

1 A That -- that was based on the director of nursing. If you
2 had somebody that was a difficult case, you would discuss it
3 with your director, and then they would -- director and the
4 human resources would guide you as to where to go with the more
5 difficult case.

6 Q If you made a recommendation for skipping a step, how is
7 that treated?

8 A The -- there was -- as long as you gave an explanation for
9 why you felt a step should be skipped and they were in
10 agreement --

11 Q (Indiscernible, simultaneous speech) --

12 A -- there was not an issue.

13 Q What is the process if a complaint potentially involves
14 abuse or neglect?

15 A If there's an abuse or neglect complaint, the person who's
16 involved, they are escorted off the property, and explained to
17 them that they will be contacted by human resources at the end
18 of the investigation.

19 Q Who conducts that investigation?

20 A Usually it's the unit manager, social work, and
21 administration.

22 Q Who is responsible for errors made by the staff on the
23 units?

24 A The unit manager is responsible to make sure that the
25 errors are clarified with the staff. If it's a med error, then

1 there's a med error -- a med error sheet that's done with a
2 part of it is the employee has to assess themselves. And that
3 gets done. And then that goes to the director of nursing. And
4 then from there, it goes to education to complete through for
5 the education process of it. And then that will go in their
6 file. If there are other errors, like in documentation, there
7 is a --

8 Q Okay. I'm going to stop you there.

9 A Yeah.

10 Q My question related to who is responsible for correcting
11 errors on the unit?

12 A We have to -- to identify them. And then it's up to the
13 nurse themselves to correct, but then the write-up goes along
14 with it.

15 Q Okay. When you say, we have to identify them, who do you
16 mean?

17 A Unit managers.

18 Q Okay. Who sets the break schedule for the units?

19 A Usually it's the charge nurse that's on, but the unit
20 manager follows through to make sure that they are following
21 through with the break schedule.

22 Q Okay. Do unit managers attend management meetings?

23 A Yes.

24 Q What management meetings did you attend as a unit manager
25 on NBI?

1 A You attend morning meeting every morning at 8:30, and then
2 whatever management meetings were called.

3 Q What do you do at morning meeting?

4 A We discuss -- we -- we discuss what happened in the last
5 24 hours on your -- on each unit.

6 Q When you were the unit manager of NBI, if you had a
7 problem with CSS staff or activities staff, what did you do?

8 A The first thing to do was to counsel them, and if it
9 continued, then you started the write-up process, just as you
10 would do with -- with nursing staff.

11 Q What would you do with the write-ups if they were for CSS
12 staff or activity staff?

13 A Actually, I used to do the write-ups and have them sign
14 them, and then I would contact their director to let them know
15 that I had disciplined their staff.

16 Q Okay.

17 MS. LANOQUETTE: I have no further questions, Your Honor.

18 JUDGE SANDRON: Ms. Pender, cross-examination?

19 MS. PENDER: Yes, thank you, Your Honor.

20 **CROSS-EXAMINATION**

21 Q BY MS. PENDER: Good afternoon, Ms. Boice. My name is
22 Alicia. I'm the lawyer for the NLRB here. I just have a few
23 questions for you this afternoon. You gave us a whole list of
24 your -- your positions at Northeast, and if my math is
25 correct -- please correct me if it's -- it's wrong, as it often

1 is -- were you the NBI unit manager from about 2012 to 2014; is
2 that right?

3 A Yes.

4 Q What is the MDS schedule that you said the unit manager
5 is -- is responsible for doing?

6 A Actually, it's a schedule that comes out -- it's -- it has
7 to do with how we get paid. That's what the MDSs are.

8 Q Okay So it's not --

9 A So we can just (indiscernible, simultaneous speech) --

10 Q -- so it's not -- sorry to interrupt you. I just want to
11 make sure. It's not employee schedules?

12 A No, it's not employee schedules.

13 Q All right. The scheduler does the employee schedules,
14 right?

15 A Correct.

16 Q And you mentioned that on NBI there's an activities board?

17 A Yes.

18 Q And that's maintained by the activity employees, right?

19 A The activities employees and the -- the discussion that
20 was had with the NBI director.

21 Q When you looked at the unit manager job description --

22 A Uh-huh.

23 Q -- I think you testified that it would be presented to a
24 new unit manager at orientation and they would sign it and then
25 it would go in their file?

1 A That's the way it's supposed to be, yes.

2 Q So it's -- if it's not in their file, would it be fair to
3 say they never signed it?

4 A I can't answer that.

5 JUDGE SANDRON: Well, I know you're subpoenaed -- various
6 documents were subpoenaed. Was there any signed such document
7 from Ms. Golden?

8 MS. PENDER: No.

9 JUDGE SANDRON: Is -- is that correct, Ms. Lanouette?

10 MS. LANOUEITE: I don't know.

11 JUDGE SANDRON: All right. Go ahead. I'll accept the
12 General Counsel's representation in the absence of any contrary
13 evidence.

14 Q BY MS. PENDER: Ms. Boice, you attended -- you attend
15 morning meeting -- morning report every day, right?

16 Q Yes.

17 A Do CSS supervisors attend that meeting?

18 Q They used to attend it when we were not under what we are
19 now, but they still do attend by phone.

20 A When you say when we are -- were -- before you were under
21 what you're under now, what does that mean?

22 Q The COVIDs. We used to meet as a whole -- department
23 heads every morning, but because we are under such restrictions
24 with COVID, they attend by phone now. So it's just the -- the
25 nursing staff that are in the conference room in the morning.

1 MS. PENDER: Okay. I have nothing further.

2 JUDGE SANDRON: Ms. Tuminaro?

3 **CROSS-EXAMINATION**

4 Q BY MS. TUMINARO: Just to -- just to follow-up. You said
5 the morning meeting, the CSS used to attend. Who -- who was
6 that -- pre-COVID, who was the CSS supervisor who would attend
7 morning meeting?

8 A Marcos DeAbreu.

9 Q Anyone else?

10 A No, that's it.

11 MS. TUMINARO: Nothing further. Thank you.

12 JUDGE SANDRON: And Ms. Joslin, any questions?

13 MS. JOSLIN: No questions, Your Honor. Thanks.

14 JUDGE SANDRON: And Ms. Lanouette, any redirect?

15 MS. LANOUETTE: Yes, Your Honor.

16 **REDIRECT EXAMINATION**

17 Q BY MS. LANOUETTE: Ms. Boice, you are currently the
18 assistant director of nursing?

19 A Yes.

20 Q As the assistant director of nursing, are you familiar
21 with the practices on NBI -- on the NBI unit as they exist?

22 A Yes.

23 Q Has anything changed to your knowledge on the NBI nude --
24 unit toward a --

25 A No.

1 Q -- unit manager on -- let me finish the question --

2 A Okay.

3 Q -- since you've been a unit manager on NBI?

4 A No.

5 MS. LANOUEETTE: That's all I have.

6 JUDGE SANDRON: A -- any follow-up questions based on
7 redirect?

8 MS. PENDER: No thank you, Your Honor.

9 JUDGE SANDRON: Okay. Thank you, Ms. Boice. You're --
10 you're done. Thanks for your time.

11 THE WITNESS: Thank you.

12 JUDGE SANDRON: Ms. Lanouette, do you have another witness
13 available?

14 MS. LANOUEETTE: We do, Your Honor. It'll just be a
15 minute. Could we take just a moment for --

16 JUDGE SANDRON: Yes.

17 MS. LANOUEETTE: I'd like to (audio interference). Thank
18 you.

19 JUDGE SANDRON: Okay. We'll -- we'll take maybe just a
20 few minutes then and come back.

21 (Off the record at 2:48 p.m.)

22 JUDGE SANDRON: Ms. Lanouette, do you have your next
23 witness?

24 MS. LANOUEETTE: I -- I do, Your Honor. Respondent calls
25 Heather Britton-Schrager, and I'm going to let her spell her

1 name.

2 JUDGE SANDRON: All right. We -- if you'll please raise
3 your right hand, I'll swear you in.

4 Whereupon,

5 **HEATHER BRITTON-SCHRAGER**

6 having been duly sworn, was called as a witness herein and was
7 examined and testified, telephonically as follows:

8 JUDGE SANDRON: Okay. You can put your hand down. If you
9 could please state and spell your full and correct legal name
10 and provide us with an address, either home or work.

11 THE WITNESS: Okay. My name is Heather Britton-Schrager.
12 It's B-R-I-T-T-O-N-S-C-H-R-A-G-E-R. I work at 300 Grant
13 Avenue, Lake Katrine, New York 12449.

14 JUDGE SANDRON: Thank you.

15 **DIRECT EXAMINATION**

16 Q BY MS. LANOUEETTE: Ms. Britton-Schrager, where are you
17 currently employed?

18 A At the Northeast Center for Rehab and Brain Injury.

19 Q And what is your position at Northeast Center?

20 A I am a social worker.

21 Q How long have you been a social worker at Northeast
22 Center?

23 A Since 2016.

24 Q Did you have any prior position at Northeast Center?

25 A Yeah, I worked here several years ago for, I think, four

1 years.

2 Q And when you worked here previously, what was your job
3 then?

4 A I was a social worker.

5 Q What education do you have to be a social worker?

6 A I have a master's degree in social work, and I'm also
7 licensed, which is a -- it's a licensure exam I have to pass.

8 Q Okay. And what ongoing training do you have in your role
9 as a social worker?

10 A 32 or 36 credit hours every three years.

11 Q What are the duties of a social worker at Northeast
12 Center?

13 A They are many, so it is assessment and advocacy and
14 investigation, ongoing support. We do crisis management; we do
15 counseling; lots of different things.

16 Q And when you're doing those things, are you doing them for
17 staff or for patients?

18 A For residents and their families and sometimes for staff.
19 It -- it depends on the situation, but mostly for residents and
20 for families.

21 Q In -- in your capacity, have you had occasion to interview
22 patients regarding their experiences at Northeast Center?

23 A Yes, frequently.

24 Q What are some examples of when you might interview
25 patients?

1 A So I interview residents quarterly to assess their mood
2 and their memory. I interview residents when there is the
3 potential for an allegation with either another resident or a
4 staff member of any kind of mistreatment. I interview
5 residents when there is, you know, an ongoing court matter for
6 that resident. I might interview them depending on the court
7 matter.

8 Q And when you say a court matter, would that be a
9 guardianship?

10 A Yes.

11 Q In your capacity as a social worker, do you have the
12 opportunity to build relationships with the residents?

13 A Yes, that's -- that's -- one of the cornerstones of -- of
14 my work with the residents is building my relationships.

15 Q And -- and how do you go about doing that?

16 A Every day. So it's done when nothing is happening. It's
17 done when there's a crisis. It's done when the resident's in a
18 good place. It's done when there's an emotional trigger point
19 for the resident. It's done when there's a holiday and the
20 resident has nobody. At all times, there is -- there is
21 relationship -- there's opportunities to build rapport.

22 Q Did there -- in 2019, was there a specific group of
23 patients you were the social worker for?

24 A Yes. I was the social worker for two units; NRP3, which
25 I'm still the social worker for, and NRP4.

1 Q And could you just tell us, generally, patients on NRP3,
2 what is their general status?

3 A They are a little bit further away from discharge. They
4 are still working on their brain injury, rehab, and their
5 physical rehabilitation. So they're a little bit further away
6 from discharge. They're more dependent. NRP4, I don't know if
7 you want me to let you know about those guys.

8 Q Can you tell us --

9 A They're a little bit less dependent, so they are much
10 closer to discharge -- or that when they -- when that unit was
11 opened, they were much closer to discharge. They were kind of
12 one foot out the way -- the way out of the door, so to speak.

13 Q All right. Did there come a time in 2019 when you were
14 asked to interview patients as -- as result of an investigation
15 involving Cathy Todd?

16 A Yes.

17 Q And were you surprised by this request?

18 A No.

19 Q Why not?

20 A Because there had been difficulties with Cathy in the
21 past.

22 Q What do you mean by difficulties?

23 A There had been occasions on which I had taken statements
24 for residents on their behalf regarding the way Cathy had
25 treated them in the past, so I was not surprised.

1 Q And when you had -- how many times in the past had you
2 taken statements that you recall regarding residents'
3 complaints?

4 A Myself, specifically on two occasions, prior to this --
5 us -- our staff blanketing the unit.

6 Q On those -- do you remember approximately when those two
7 prior occasions were?

8 A One I recall very well was on Valentine's Day in 2019
9 because it was --

10 Q What --

11 A -- very --

12 Q What was the circumstances of you becoming involved in
13 that instance?

14 A So I was actually late leaving that day, we -- I think we
15 had had care planning or a meeting. And I was in the back
16 room, and I heard a resident. I heard commotion, and -- and
17 the resident was -- I went to investigate, and the resident was
18 tearing up her artwork, which she was very proud of, and she
19 was crying. And I asked her what was going on, because this
20 wasn't like her. She was actually very close to discharge.
21 She was less than a week away, I think, from discharge. And
22 she'd had an encounter with Cathy that was embarrassing, and
23 she felt demeaning in front of her peers. So I -- I ended up
24 taking a statement from her that I put in a note.

25 Q Okay. And I'm going to show you now what's been marked as

1 Respondent's Exhibit 8, page 3.

2 A Oh, my gosh. That's so tiny.

3 JUDGE SANDRON: Maybe you can make it a little --

4 MS. LANOUEETTE: She can --

5 JUDGE SANDRON: -- bigger.

6 MS. LANOUEETTE: She can blow it up, or there is a notebook
7 in there, if you prefer. There's a tab.

8 THE WITNESS: No, I can see it better now.

9 Q BY MS. LANOUEETTE: Okay. Do you recognize Respondent's
10 Exhibit 8, page 3?

11 A Yes.

12 Q And is this the note you were referring to in your --

13 A Yes.

14 Q -- testimony a few minutes ago?

15 A Yes.

16 Q You said there was at least one other occasion you
17 recalled having to make a statement regarding Ms. Todd prior to
18 the November 2019 event. What do you remember about how that
19 came to be?

20 JUDGE SANDRON: (Audio interference) --

21 A The --

22 JUDGE SANDRON: -- you -- well, do you remember when that
23 was, the -- the --

24 Q BY MS. LANOUEETTE: Yes, do you remember when that was?

25 A It was in October --

1 JUDGE SANDRON: Of --

2 A -- late October --

3 JUDGE SANDRON: -- of what --

4 A -- the same year.

5 JUDGE SANDRON: 2019?

6 THE WITNESS: Yes, sir.

7 JUDGE SANDRON: Go ahead.

8 Q BY MS. LANOUILLE: What do you remember about how you came
9 to feel you compelled to make a statement?

10 A The resident in question was, again, emotionally upset
11 because she had gotten things out of order. She put her
12 pajamas on, and this resident would sometimes wear, like,
13 nightgowns, and rang her bell instead of walking out to the
14 desk to get her medications at bedtime. And Cathy had told
15 her, according to the resident, that she was not going to be
16 getting her medications because she was physically able to --
17 to walk; that she should've known to go to the desk to get her
18 medications because she's physically able to walk, and
19 therefore, it would be considered a refusal.

20 Q Why did you -- why did that statement concern you?

21 A Because the resident has a brain injury and sometimes gets
22 things mixed up, and she's a patient, and it's not a refusal.
23 It is the resident getting things out of order. And the
24 resident has a right to have her medications, and if she has a,
25 you know -- if she wants to take her medications after she's

1 already gotten her pajamas on and doesn't feel comfortable
2 coming out in her pajamas, that's her prerogative; that's her
3 preference; that's her right. She has rights.

4 Q NRP4, is it a single-gendered or mixed-gendered floor?

5 A It's a mix-gendered unit.

6 Q Okay. I'm going to show you now page 2 of Exhibit R-8.

7 And ask if you recognize this statement?

8 A Yes.

9 Q Okay. Is that the statement you were referencing a moment
10 ago, or is this a different one?

11 A No, actually, this is a different one, isn't it?

12 Q I thought it was the right one but --

13 A Yeah, no, this is a different one.

14 Q Okay.

15 A Sorry.

16 Q That's okay. Do you recognize the statement made in R-8,
17 page 2?

18 A Yes.

19 Q How did that -- what is it (audio interference) --

20 A I really can't believe I forgot about this.

21 Q That's okay. What is the date of this statement?

22 A 10/30/19.

23 Q And who -- who typed this document up?

24 A I typed it up. So it was a -- oh, a statement made by the
25 resident that I typed up.

1 JUDGE SANDRON: And what did you do with the statement?

2 THE WITNESS: I gave it to my boss. And -- and the same
3 thing with the last statement, too, I gave it to my boss, who
4 brought it to the then director of nursing who is not the
5 current director of nursing.

6 Q BY MS. LANOUE: Okay. When you do a statement like
7 this where you type it up, are you typing verbatim what the
8 resident said, or -- or is this a summary?

9 A It definitely depends. If the resident is having a
10 difficult time focusing, I will try to get them back on track,
11 and I will do the best I can with the statement. So this
12 resident, though, doesn't have that difficult a time focusing,
13 and I -- I just want to read the statement to make sure I'm
14 remembering accurately.

15 Q Take your time.

16 A No, I think this is the same statement. So she -- she
17 wasn't able to focus on the rest of it, which was that she was
18 going to write it as a refusal if she didn't come to the desk.

19 JUDGE SANDRON: So it -- it's one incident?

20 THE WITNESS: Yes.

21 JUDGE SANDRON: October.

22 THE WITNESS: Yeah.

23 JUDGE SANDRON: Okay.

24 MS. LANOUE: All right.

25 A So generally I will -- to answer your question, I will

1 write it as a verbatim statement if I can get a coherent
2 verbatim statement from the resident.

3 Q BY MS. LANOUEETTE: Okay. I want --

4 MS. LANOUEETTE: Your Honor, at this time, we would offer
5 R-8.

6 JUDGE SANDRON: Any -- any objections? Okay. Yes.

7 MS. PENDER: A voir dire, Your Honor.

8 **VOIR DIRE EXAMINATION**

9 Q BY MS. PENDER: Looking at R-8, page 2, was this written
10 on the -- the date that it's dated?

11 JUDGE SANDRON: If you -- if you can --

12 A With --

13 JUDGE SANDRON: -- remember.

14 A Okay. Yes.

15 Q BY MS. PENDER: Is she asking you --

16 A Yes.

17 Q Yes, it was? Okay.

18 MS. PENDER: I have no objections.

19 JUDGE SANDRON: Hearing no objections, Respondent
20 Exhibit --

21 MS. TUMINARO: I just have a quick question -- a voir dire
22 question.

23 **VOIR DIRE EXAMINATION**

24 Q BY MS. TUMINARO: It -- it says in the parentheses,

25 witnessed by J blank S blank according to A blank. Are those

1 initials of other patients or other social workers? Who --
2 who -- who was the witnessed by? Who did that reflect?

3 JUDGE SANDRON: If you can recall.

4 A Well, this is blanked out.

5 Q BY MS. TUMINARO: Well, no, I mean, what is it -- what is
6 that meant to denote that -- they -- who was witnessing it, the
7 statement? The -- was the -- this witnessed by --

8 A Oh, I'm sorry. So I understand your question. I
9 apologize. So the events were witnessed by other residents.

10 Q Okay. But they didn't witness you typing this statement?

11 A No --

12 Q Okay.

13 A -- the events were -- I apologize -- the events were
14 witnessed by that resident and that resident according to the
15 resident, whose name is A on both.

16 JUDGE SANDRON: Okay, can --

17 Q BY MS. TUMINARO: According to the resident who gave you
18 this information, there were two other --

19 A Yes.

20 Q -- residents who witnessed it --

21 A Right.

22 Q -- is that right? Okay.

23 A The other two -- the J resident and the S resident
24 witnessed A's experience.

25 Q Were -- were there --

1 MS. TUMINARO: Sorry, go ahead, Your Honor.

2 JUDGE SANDRON: You didn't actually interview them,
3 though, separately, A and --

4 THE WITNESS: I did not interview --

5 JUDGE SANDRON: -- A and S?

6 THE WITNESS: -- them separately. I was giving that
7 statement to the powers that be so that they could interview
8 those other two residents separately.

9 JUDGE SANDRON: I see.

10 Q BY MS. TUMINARO: Do you have any other (audio
11 interference) coming from one person's perspective?

12 JUDGE SANDRON: I see.

13 Q BY MS. TUMINARO: Do you have any other notes of your
14 interview with this resident about the incident?

15 A I don't know the answer to that question without looking
16 at my notes. So I may have some follow-up, you know,
17 supportive check-ins with the resident's status post-incident,
18 but I -- I -- I don't know without looking at my notes, and I'm
19 not in front of my notes.

20 Q I understand.

21 JUDGE SANDRON: All right. Hearing no objections,
22 Respondent Exhibit 8 is received.

23 **(Respondent Exhibit Number 8 Received into Evidence)**

24 **RESUMED DIRECT EXAMINATION**

25 Q BY MS. LANOUILLE: I want to now move to -- back to 2019.

1 And ask, prior to conducting those inter -- the -- the
2 interviews in 2019 of residents, had you done similar
3 interviews in the past?

4 A Yes.

5 Q Okay. How often?

6 A I mean, frequently enough. I mean, it does come up with
7 people who have injuries, with families who have dynamics that
8 it gives us kind of things , you know, comes up from time to
9 time --

10 Q And --

11 A -- so.

12 Q -- what is the process for the interviews that you
13 conducted in 2019, how did they come to be and what did you do?

14 A Necessary?

15 Q Oh, sorry. How -- how did the interviews that you did in
16 2019, how did you come to learn you would be doing them?

17 A I think when I came to work that morning, it was -- we
18 were all -- all the social workers came together and -- and
19 were told that -- excuse me, the unit manager had discovered
20 some things after doing a med pass and talking, again, with her
21 residents, who she knows, again, pretty, pretty well, like I
22 do. So they wanted to know if there was some kind of pattern
23 so that we could protect the residents. So all of the
24 residents on the unit were split among the res -- the social
25 workers, and that's how we did it, and that's how --

1 JUDGE SANDRON: Who -- who --

2 A -- we split every (indiscernible, simultaneous speech).

3 JUDGE SANDRON: -- who actu -- who actually asked you
4 to -- who actually asked you to do this?

5 THE WITNESS: Usually it's the director of social work.
6 In this particular case, I don't know if it was the director of
7 social work or whether it was, you know, the lead social
8 worker. Usually that would be myself or my colleague, Rachel.
9 So in this instance, it was so long ago, I'm not sure.

10 JUDGE SANDRON: And -- and -- and how many social workers
11 were there at the time -- at the time, if you recall?

12 THE WITNESS: Five. That's a guess, though.

13 JUDGE SANDRON: All right. As -- as best as you can
14 remember.

15 THE WITNESS: Yeah. Probably five.

16 Q BY MS. LANOUEETTE: What did --

17 JUDGE SANDRON: Let me -- let me close the document, I --
18 I think.

19 MS. LANOUEETTE: Yeah, that's fine. It'll be a minute
20 before I get to R-6.

21 Q BY MS. LANOUEETTE: What is the process for conducting such
22 interviews?

23 A So from the beginning, we have -- we take the number of
24 residents that we have and we divide them among the social
25 workers. If there's a -- a newer social worker, we won't give

1 that social worker a resident who might be exceptionally
2 difficult to communicate with. Like, I think, if somebody has
3 aphasia, one of the more experienced social workers will take
4 that resident on, but generally, we divide up the residents by
5 the number of social workers.

6 Q And did you follow that process in this case?

7 A Yep.

8 Q Yes?

9 A Yes. Sorry.

10 Q That's okay. How do you ensure that all social workers
11 ask the same questions?

12 A So we have a basic interview that we have kind of honed
13 over time that covers the kinds of questions that we would want
14 to ensure that we ask to make sure that we're asking about
15 physical abuse, that we're asking about emotional or verbal
16 abuse or intellectual abuse or neglect. And then we will ask
17 very specific questions. So in the case of a specific staff
18 member, did X staff member yell at you? Did X staff member,
19 you know, refuse to give you your medication, or no, wh -- you
20 know, did X staff member -- did you have a problem getting your
21 X -- your medication from X staff member, that kind of thing.

22 Q And now I would like to show you what's been marked as
23 Respondent's Exhibit 6 -- or I guess it's Respondent's Exhibit
24 6 in evidence.

25 A Okay.

1 Q The entirety of this document is 72 pages. The -- do you
2 recognize the form that is depicted in the first two pages of
3 Exhibit 6?

4 A Yes.

5 Q Okay. Do you know who signed that -- that particular note
6 as interviewer?

7 A Can you go back up?

8 Q If you don't, that's okay. I -- I just -- we wondered if
9 you would maybe recognize the signature.

10 A I feel like I'm on Jeopardy. I want to say that's Rachel
11 Garrity, but I'm not solid on that.

12 Q That's okay. That's all right.

13 JUDGE SANDRON: Remem -- remember you got to spell her
14 name. Do you know, the spelling?

15 MS. LANOUEETTE: Ra -- Rachel is R-A-C-H-E-L. Garrity is
16 G-A-R-I-T-Y, but if the wit --

17 THE WITNESS: It's two Rs, I'm pretty sure.

18 Q BY MS. LANOUEETTE: All right. Ms. Britton-Schrager, is
19 this the same form that you used doing interviews with regard
20 to neighbors in the -- in the investigation involving Cathy
21 Todd?

22 A Yes.

23 Q Okay. And if I show you specifically pages 9 and 10,
24 is -- is that your handwriting on pages 9 and 10?

25 A Looks like.

- 1 Q And is that your signature at the bottom?
- 2 A Yes, ma'am.
- 3 Q Approximately how many interviews did you conduct?
- 4 A I think I did three or four.
- 5 Q Okay. And on page 8 under the -- the question 6, "Have
6 staff ever yelled or been rude to you", the answer was, "Yes, a
7 nurse." When you got a vague answer like that -- it's page
8 9 -- what would you do?
- 9 A I would try to get them to tell me which nurse it was.
- 10 Q Okay. And if they couldn't tell you which nurse it was?
- 11 A I wouldn't write it down.
- 12 Q Okay. In this case, she wrote a nurse, but there's no
13 name. Fair to say the resident couldn't tell you who?
- 14 A Right.
- 15 Q Okay. After --
- 16 A And I -- I think -- can you go up to the top? I think
17 this is the resident with aphasia, and she kept going, yes,
18 yes, that one, that -- yes. And I tried to -- I tried
19 everything. Can you give me a physical description? Was it a
20 man or a woman? Nothing. Nothing. That resident was having a
21 bad day, having a bad communication day.
- 22 Q What happened after all of the social workers completed
23 interviews?
- 24 A So we would get together and kind of pool our findings,
25 and we would bring that to both our boss and the director of

1 nursing.

2 Q And did you follow that process in the case of Ms. Todd?

3 A Yes.

4 Q Of the residents you interviewed, personally, did any of
5 them express concerns with regard to Ms. Todd?

6 A Yes.

7 Q What (indiscernible, simultaneous speech) --

8 JUDGE SANDRON: All right, well -- well I -- well I think
9 the documents -- it -- it's in the -- in the exhibit, isn't it,
10 I mean, how many interviews she conducted and -- and what they
11 told her? So I don't know if she needs to re -- repeat what's
12 already in the admitted exhibit. You know, if there's
13 something you --

14 MS. LANOUEETTE: Okay.

15 JUDGE SANDRON: -- wanted her to add, that'd be fine, but
16 I don't think she needs to repeat it.

17 Q BY MS. LANOUEETTE: What was the conclusion of --

18 MS. LANOUEETTE: So you could -- we can stop screen sharing
19 the document.

20 Q BY MS. LANOUEETTE: What was the conclusion of the social
21 work department with regard to their interviews?

22 A That there was a concern with certain residents that --
23 that the anecdotal evidence that the unit manager gave was
24 experienced by certain residents on the unit. That Cathy was
25 very pleasant with some residents and not very pleasant with

1 others, and would sometimes withhold treatment to some
2 residents -- or care to some residents that she didn't like.

3 JUDGE SANDRON: Now -- now, was this conclusion, was it
4 orally presented or was something put in writing summarizing
5 wh -- what you've just said, if you --

6 THE WITNESS: Just through interviews. We brought the
7 interviews and we showed the interviews to our boss, and our
8 boss brought the interviews over. And then after that time, I
9 recalled the two other interviews that I had done that went
10 nowhere with the previous director of nursing; it was like they
11 disappeared. And then a previous resident who had come to my
12 alt -- my other unit because of Cathy, because of an incident
13 with Cathy, oh -- while many incidents with Cathy that went
14 unresolved, a mediation that had failed, and this resident was
15 so uncomfortable that she moved from 4 to 3 while I was a
16 social worker on 3. So you know, I brought that -- those two
17 interviews that I did to the new director of nursing after all
18 of our interviews were presented from that day --

19 JUDGE SANDRON: Okay, I mean --

20 THE WITNESS: -- of the investigation.

21 JUDGE SANDRON: Okay. Now I think what -- what I was
22 asking was, you said that collectively the social workers, you
23 reached a conclusion with regard to Ms. Todd that you presented
24 to the director of nurses -- director of nursing. Did -- was
25 that oral -- did you discuss that --

1 THE WITNESS: Yeah, it was oral.

2 JUDGE SANDRON: -- in orally -- okay.

3 THE WITNESS: Yes. Sorry.

4 Q BY MS. LANOUEETTE: And -- and then I think you also have
5 described for us that you individually provided additional
6 information to the director of nursing; is that right?

7 A Yep.

8 Q In your role as an advocate for the patients on NRP4, did
9 you have an opinion as to what should happen with regard to Ms.
10 Todd?

11 A I did not venture an opinion about what should happen to
12 Cathy, no. I was concerned, but I would never -- that's not my
13 role. I just presented the information about what my residents
14 were experiencing.

15 Q Okay. Did you know anything about Cathy Todd's union
16 activities at the time you completed this investigation?

17 A Not -- not really. I mean, you know, people talk, but I
18 don't really -- she never talked to me about the Union. She
19 never talked in front of me about the Union. Not really.

20 Q Did anything you had heard about the Union or about Cathy
21 Todd's involvement in the unit influence your -- the way you
22 conducted this investigation or the information you provided?

23 A None. It doesn't -- the Union doesn't impact my work
24 here.

25 MS. LANOUEETTE: All right. No further questions.

1 JUDGE SANDRON: Ms. Pender, cross-examination?

2 MS. PENDER: Yes, thank you, Your Honor.

3 **CROSS-EXAMINATION**

4 Q BY MS. PENDER: Hi, Ms. -- is it Britton-Schrager?

5 A Yes.

6 Q Okay. Hi. My name is Alicia Pender. I'm the attorney
7 for the National Labor Relations Board. I just have a few
8 questions for you.

9 A Okay.

10 Q When did you stop being the social worker for NRP4?

11 A When the Union -- or so, sorry, when the unit went under
12 construction.

13 Q And when was that, approximately?

14 A Couple of months ago. Like, it happened so slowly, and
15 then suddenly my -- they said you got to get out of your
16 office, so (indiscernible, simultaneous speech) --

17 Q So sometime toward the end of 2020?

18 A Yes, yes. Yeah, I think in November.

19 Q And I think you testified that NRP4, the -- the neighbors
20 there are less dependent?

21 A Yes.

22 Q And so my understanding is there is -- there's -- there's
23 NRP1, 2, 3, 4, and 5, right?

24 A Yes.

25 Q And is NRP1 for neighbors who are most dependent, and then

- 1 all across the spectrum to 5 is least dependent?
- 2 A No --
- 3 Q Okay --
- 4 A -- no. It --
- 5 Q -- can you tell me --
- 6 A -- used to work that way, but no. There's no rhyme or
7 reason to the numbers, sorry.
- 8 Q That's okay. Are -- is there a unit of neighbors who are
9 more independent than NRP4?
- 10 A No.
- 11 Q That's the most independent you're going to get?
- 12 A Superstars. They are -- they are wa -- walking while --
13 hopefully walking, but sometimes not walking, but our examples,
14 moving out the door.
- 15 Q Okay.
- 16 A Yeah.
- 17 Q And because they're -- they're more independent, isn't it
18 true that most of them are supposed to, if they can remember,
19 go to the nurses' station to get their medications?
- 20 A That's the key, though. If they can remember, and so --
- 21 Q Right, and if they can remember, then they are supposed
22 to?
- 23 A Yes, but there's -- there's also --
- 24 Q Okay.
- 25 A -- the right to preferences and self-determination,

1 because they do live in a nursing home.

2 Q Of course. I'm going to show you, if I can find it -- I
3 believe --

4 A And also the -- like an executive functioning piece to it,
5 and so --

6 Q I'm sorry. I don't mean to interrupt you, but it --
7 you -- you got to wait till I ask you a question to give me an
8 answer. I'm sorry. That's just the way it works in this kind
9 of proceeding.

10 I'm going to show you, as soon as I can find it -- I'm
11 going to show you -- it's -- it's R-10, which I believe is
12 already in the record, although maybe someone can correct me if
13 I'm wrong. Can you see my screen?

14 JUDGE SANDRON: Yeah, R-10 --

15 A Yep.

16 JUDGE SANDRON: -- is -- R-10's been admitted.

17 MS. PENDER: Okay.

18 Q BY MS. PENDER: And so this is the self-administration of
19 medications policy for Northeast, right?

20 A Uh-huh.

21 JUDGE SANDRON: Oh you --

22 Q BY MS. PENDER: Is that a yes?

23 JUDGE SANDRON: -- you got to say yes.

24 A I'm sorry. Yes.

25 Q BY MS. PENDER: Thank you. And under level 2 when it says

1 goals to be met, one of the goals is to approach the medication
2 nurse without prompting, right?

3 A For a level 2, yes.

4 Q Right. Okay. And that's a goal. That's not an absolute,
5 but it's -- it's what people should -- at level 2 should be
6 working toward?

7 A Yes.

8 Q Are any of the patients on NRP2 at -- NRP4 at level 2?

9 A That would be hard for me to answer at this point.

10 Q Okay, that's fine. In your role as the social worker for
11 NRP3 and 4, did you ever take statements from neighbors about
12 other staff members on NRP4 aside from Cathy Todd?

13 A Yes, I have taken statements about other staff members.

14 Q And do you know whether investigations were conducted as
15 a -- as a result of those statements that were taken by you?

16 A Yep.

17 Q Yes, they were?

18 A Yes.

19 Q Okay. You testified that at some point you became
20 aware -- you heard that Cathy Todd supported the Union, right?

21 MS. LANOUE: Objection.

22 A Yeah, I heard --

23 MS. LANOUE: She did not say that.

24 MS. PENDER: Okay --

25 JUDGE SANDRON: Well --

1 Q BY MS. PENDER: What do you -- what -- how -- did there
2 come a time when you became aware that Cathy Todd supported the
3 Union?

4 A I heard rumors about multiple staff members at different
5 times, so I don't know --

6 JUDGE SANDRON: All right. The -- there's no contention,
7 though, that she was a supervisory or managerial --

8 MS. PENDER: No.

9 JUDGE SANDRON: -- employee, is there?

10 MS. PENDER: No.

11 MS. LANOUEETTE: No.

12 JUDGE SANDRON: So.

13 MS. PENDER: All right. I have nothing further, Your
14 Honor.

15 JUDGE SANDRON: Okay. Ms. Tuminaro?

16 MS. TUMINARO: Yeah, I just have a few questions.

17 **CROSS-EXAMINATION**

18 Q BY MS. TUMINARO: Good afternoon. How many -- how many
19 residents are there on NRP -- in -- in fall of 2019, around the
20 time that you're testifying about, how many residents were
21 there on NRP4?

22 A It would be difficult for me to answer that question.
23 There would be no more than 40.

24 Q Okay. And you said that after you performed these
25 interviews wherein you filled out the questionnaire in R-6, you

1 showed the interviews to our boss; who is that person? Who's
2 our boss?

3 A Our supervisor is the director of social work, Paula
4 Kindos-Carberry.

5 JUDGE SANDRON: Can we spell that?

6 THE WITNESS: It's K-I-N-D-O-S, Carberry, C-A-R-B-E-R-R-Y.

7 JUDGE SANDRON: Thank you.

8 THE WITNESS: Sure.

9 Q BY MS. TUMINARO: And do you know what, if anything, she
10 did with those -- with those notes in R-6?

11 A She brought those to the director of nursing.

12 Q And who was that?

13 A Carolyn Carchidi. You're going to ask me to spell that,
14 and I'm not --

15 Q No, no, no, it's --

16 JUDGE SANDRON: I think we have that.

17 Q BY MS. TUMINARO: It's fine. Thank you. And you -- you
18 testified that, in the course of your responsibilities as a
19 social worker at the facility, you perform in -- interviews
20 of -- of neighbors, and if a -- if a neighbor mentions a staff
21 member's conduct, what, if anything, do you do with that
22 information?

23 A So it depends on -- on what they're telling us. If it
24 falls into the category of a neglect or abuse, we would stop
25 everything we are doing and talk to a supervisor. If we

1 witness something like that, we would, of course, stop that
2 action and talk to a supervisor.

3 Q Do you ever talk to the -- the staff member themselves
4 about what it is that's been said?

5 A We have a protocol. What we would do is tell them they
6 have a call on line 5 or 7. I've told a staff member they have
7 a call on line 7. I think it's line 5.

8 Q And what does that mean?

9 A That lets them know -- when we train here in our
10 orientation that lets them know that they are out of line and
11 they need to take a step back, and that lets them know that
12 they need to move away.

13 Q But do you explain to that staff member the -- the --
14 the -- the facts about which you're concerned they're "out of
15 line"?

16 A When I have told a staff member that, I have explained it
17 to them, and then I have brought them to their -- I brought
18 them to their supervisor. Because if it was -- if it was
19 somebody in my department, I'm more comfortable having a direct
20 conversation with them. If it's somebody in the nursing
21 department, that's a conversation -- a conversation that should
22 be had with -- within their department as well. So something
23 that should go directly.

24 Q So you don't typically have a conversation with a staff
25 member if they're in the nursing department; is that true?

1 A I would have an immediate conversation but follow it up
2 with a -- a conversation that includes their supervisor so that
3 their supervisor is aware. Otherwise, you know --

4 Q And how -- what's --

5 A -- I would just let their supervisor --

6 Q -- what's --

7 A -- know to address them.

8 Q What's the average length of stay of a resident on NRP4?

9 A That's dependent. It depends on their injury, resources,
10 and abilities. So it really, really varies. It -- it could be
11 several months to several years, unfortunately.

12 Q And following --

13 A (Indiscernible, simultaneous speech) --

14 Q -- your interview --

15 JUDGE SANDRON: You're --

16 Q BY MS. TUMINARO: Sorry, I didn't mean to cut you off.

17 JUDGE SANDRON: Yeah, make sure you give her a chance to
18 finish her answer.

19 MS. TUMINARO: Sure.

20 Q BY MS. TUMINARO: I -- I'm sorry. I -- I didn't mean to
21 cut you off.

22 A That's okay. Brain injury is a longer rehab stay than,
23 say, a knee. Sorry.

24 Q So is it -- I know that we -- you said that the -- the
25 residents on NRP4 are some of your most able or ready --

1 readily able to reenter the community, but is it true that some
2 of those residents on NRP4 are there for a period of years?

3 A Yes.

4 Q Okay. And following your interviews in November of 2019,
5 wherein you noted two residents' complaints about Cathy Todd,
6 did you then go back into your treatment notes for those
7 individuals?

8 A I have been back into my treatment notes for those
9 individuals, yes.

10 Q But following -- following when you took those interviews,
11 did you go back into your notes for those individuals to assess
12 their memory?

13 A I have assessed their memories, yes.

14 Q Right after, but my -- my question is, after you did those
15 interviews with those two individuals who complained about
16 Cathy Todd, did you go back and reference your notes on their
17 memory for those two individuals?

18 A No.

19 MS. TUMINARO: I have nothing further.

20 JUDGE SANDRON: And Ms. Joslin, any questions?

21 MS. JOSLIN: No, thank you, Your Honor.

22 JUDGE SANDRON: And Ms. Lanouette, any redirect?

23 MS. LANOUEETTE: Yes, Your Honor.

24 **REDIRECT EXAMINATION**

25 Q BY MS. LANOUEETTE: When Ms. Tuminaro references the two

1 individuals you interviewed, I -- do you know which interviews
2 she's referring to?

3 A I'm assuming it's the interview from the October
4 interview, that resident. I don't want to name the person,
5 A --

6 Q A.

7 A -- and G -- G.

8 Q And with regard to A -- let me ask you generally. How
9 often do you assess the ability of residents to be accurate
10 narrators?

11 A I assess their memory, their brief interview for mental
12 status, quarterly, and if there's a change. And I believe one
13 of the residents was due for a memory assessment during that
14 time period, because I think I wrote their memory assessment on
15 the interview sheet.

16 Q I'm going to show you what's been marked, again, as
17 Respondent's Exhibit 8, page 3. Is -- do you know which
18 resident is referred to in this note?

19 A That is S.

20 Q Okay. And are you aware of the memory --

21 A Her BIMS was usually a 14 or a 15 out of 15.

22 Q And 15 is --

23 A Pretty good.

24 Q And I'll show you page 2 and ask if in 20 -- October 2019,
25 you were aware of the memory status of A?

1 A Her memory status was a little bit more variable, but
2 again, she was usually moderate to good. I wouldn't -- I
3 wouldn't want to venture a guess of what her number score was,
4 but it u -- was usually in the moderate to intact range at that
5 time.

6 Q Okay. And with regard to individuals -- how many
7 individuals did you interview in November of 2019 who had
8 complaints about Cathy Todd?

9 A Just the one.

10 JUDGE SANDRON: All right. All right, I think we're --

11 Q BY MS. LANOUEETTE: Okay.

12 JUDGE SANDRON: -- getting beyond the scope of --

13 MS. LANOUEETTE: So my question is --

14 JUDGE SANDRON: -- of -- of redirect.

15 MS. LANOUEETTE: -- the same -- my question is the same
16 issue, Your Honor.

17 Q BY MS. LANOUEETTE: For the one individual that you --

18 JUDGE SANDRON: Yes.

19 Q BY MS. LANOUEETTE: -- interviewed in 2019, what was their
20 memory status?

21 A I believe it was --

22 JUDGE SANDRON: Okay.

23 A -- either a 14 or a 15 on the BIMS --

24 JUDGE SANDRON: I see.

25 A -- but it -- 14 or a 15.

1 Q BY MS. LANOUEETTE: Okay. Ms. Pender asked you some
2 questions about coming out to the desk, and you started to talk
3 about executive functioning.

4 A Right.

5 Q What were you referring to?

6 A So a person who has a brain injury has an executive
7 functioning impairment and sometimes that means they will put B
8 before A. So in an ideal world, yes, if that resident who was
9 A was on level 2 for medication, which I don't know that that
10 person was, but if that person was on level 2 for medication,
11 they will sometimes put B before A. So if that person put
12 their pajamas on and then realized they needed medication and
13 they got it out of order, what do we do then? Do we withhold
14 the medication? That doesn't really seem -- that seems a
15 little bit rigid in a nursing home where we are supposed to be
16 providing care, because ultimately that person still requires
17 that medication regardless of whether they're on level 2 or
18 not, and they still have a brain injury.

19 Q And --

20 A So if they're not able to sustain -- if ultimate -- over
21 and over and over again, they still -- they keep putting B
22 before A, then we need to know that as a team so we can take
23 them off of level 2, which is a bigger problem. But that
24 person still needs the medication because what's in the
25 medication? What -- what -- what are they not getting that

1 night? Are they not getting seizure medication? I don't know.
2 I have no idea. I'm a social worker. That's not my area. But
3 what are they not getting?

4 MS. LANOUEETTE: I have no other questions.

5 JUDGE SANDRON: Any follow-up questions?

6 MS. PENDER: No, thank you, Your Honor.

7 JUDGE SANDRON: Okay, thank you. Appreciate your time.
8 You're done.

9 THE WITNESS: Sure. Thank you.

10 JUDGE SANDRON: Okay. I think we probably have time for
11 one additional witness, depend -- you know, depending on how
12 long the witness will be.

13 I think Ms. Lan -- Ms. Lanouette is on -- I think you have
14 to unmute. Oh, I think you have to unmute.

15 MS. LANOUEETTE: I'm sorry. I was just asking if --

16 JUDGE SANDRON: Oh, but it's okay.

17 MS. LANOUEETTE: -- he's still present in the building.

18 JUDGE SANDRON: Oh, okay.

19 MS. LANOUEETTE: And whether we could finish -- we were
20 contemplating whether we could finish that testimony today.

21 JUDGE SANDRON: I mean -- I -- I assume we're -- I mean,
22 we have the trial schedule for the week, so if we -- we could
23 finish up tomorrow, and we could start at 10. And I assume
24 we'll definitely finish by tomorrow, even if the General
25 Counsel and -- or the Charging Parties have any rebuttal.

1 MS. LANOUEETTE: I -- I'm fine, Your Honor. I'd like to
2 see if we can get one more witness, and maybe we could --

3 JUDGE SANDRON: All right.

4 MS. LANOUEETTE: -- (Indiscernible, simultaneous speech)

5 JUDGE SANDRON: How many more --

6 MS. LANOUEETTE: -- done.

7 JUDGE SANDRON: -- how many -- how many more witnesses do
8 you have?

9 MS. LANOUEETTE: I have at least three, and possibly five.

10 JUDGE SANDRON: Well, I don't think we're going to --
11 we're definitely not going to finish today. You think that we
12 can finish by 5 or so with direct and cross on the next
13 witness?

14 MS. LANOUEETTE: I don't know about cross. I -- I
15 certainly can --

16 JUDGE SANDRON: Well --

17 MS. LANOUEETTE: -- finish direct.

18 JUDGE SANDRON: All right. If you want to finish direct
19 today, and then -- you know, if -- if there's not sufficient
20 time, we'll take cross in the morning.

21 MS. LANOUEETTE: That's -- that's fine, Your Honor.
22 Let's -- let's see if he's even still here.

23 JUDGE SANDRON: All right. All right. We can take his --

24 MS. LANOUEETTE: And make sure he's still here. It --
25 it'll just be a couple of minutes.

1 JUDGE SANDRON: All right. We'll go off the record just
2 for a moment and then we'll try to finish his direct today.
3 (Off the record at 3:52 p.m.)

4 JUDGE SANDRON: Okay. I think everybody is back.

5 MS. LANOUEITE: And Mr. DeAbreu, you can remove your mask
6 because you are in a room by yourself.

7 MR. DEABREU: Thank you.

8 JUDGE SANDRON: All right. I -- I'm going to go ahead
9 and -- and swear you in. So if you'll raise your right hand.
10 Whereupon,

11 MARCOS DEABREU

12 having been duly sworn, was called as a witness herein and was
13 examined and testified, telephonically as follows:

14 JUDGE SANDRON: And if you could please -- you can lower
15 your hand. That's fine. If you could please state and spell
16 your full and correct legal name for the record, and provide us
17 with an address, either work or residence.

18 THE WITNESS: Yes. My name is Marcos, M-A-R-C-O-S.
19 Middle initial H. Last name is DeAbreu. D as in dog, E-A, B
20 as in boy, R-E-U. My address is 246 Old Kings Highway, Lake
21 Katrine, New York. Zip code 12449.

22 JUDGE SANDRON: Okay. Thank you.

23 THE WITNESS: You're welcome, sir.

24 DIRECT EXAMINATION

25 Q BY MS. LANOUEITE: Mr. DeAbreu, where are you employed?

1 A By Northeast Center for Rehabilitation and Brain Injury.

2 Q And what is your position at Northeast Center?

3 A I'm the CSS director.

4 Q How long have you been the CSS director?

5 A For about 12 years.

6 Q Okay. What does the CSS department do at Northeast?

7 A They work strictly with the resident peoples. Redirect
8 them, care for their behaviors. Is -- has the check the -- the
9 neighbors for behaviors. We have a 15-minutes check that
10 includes supervision. We have one-to-one. We are responsible
11 for promote safety for the (audio interference). We are
12 responsible to promote safety for the perimeter. And we have
13 the podium where we sign our resident neighbors out and in.

14 Q And how many employees are there in the CSS department, to
15 the best of your knowledge?

16 A It's around 46 people.

17 Q How many -- how is the department organized in terms of
18 reporting between the staff?

19 A All right. We have -- this is going to have six
20 supervisors. We have two supervisors in the first shift, 7 to
21 3. We have two supervisors in second shift, 3 to 11. And we
22 have two supervisors overnight, 11 to 7. And the CSS in the
23 first place report to them.

24 Q Okay. And was that the same structure in October and
25 November of 2019?

1 A That's correct. Exactly the same.

2 Q Okay. How many days a week do the CSS supervisors work?

3 A Five days a week, with every other weekend off.

4 Q Okay. And when there are two supervisors on shift, how do
5 they -- what do they do in terms of the supervisory duties?

6 A They share their assignments working as a team.

7 JUDGE SANDRON: Excuse me. I just want to check. Do you
8 hear any background noise from my end? I'm just -- okay, good.
9 There's a little bit of an outside noise. I just want to make
10 sure it doesn't percolate into the Zoom hearing. Go ahead.

11 Q BY MS. LANOUE: What are the responsibilities of the
12 CSS supervisors?

13 A Assign the CSS, guide the CSS, discipline the CSS, and
14 supervise of the CSS.

15 Q I want to show you now what has been marked as Exhibit --
16 where is it. Do I not have it -- here. It's R-17. Sorry.
17 And I will ask if you recognize this exhibit?

18 A Yes. I do.

19 Q What do you recognize this to be?

20 A This is the job descript -- description for CSS.

21 Q And to your knowledge, has that job description changed
22 between 2019 and now?

23 A Not -- not really. Maybe -- maybe some words, some
24 improvement, because I can't see right now. And at the time
25 had a behavioral log book; now is electronical medical records.

1 But the -- the basic is the same. There's no change.

2 JUDGE SANDRON: All -- all right. We'll consider this to
3 be substantially in effect, without necessarily being word for
4 word what was in effect in 2019.

5 MS. LANOUEITE: I offer Exhibit R-24.

6 JUDGE SANDRON: I -- I think --

7 MS. LANOUEITE: Exhibit R-17.

8 JUDGE SANDRON: I think R-17 was already admitted.

9 MS. LANOUEITE: Oh, okay. I couldn't remember if Mr. Endy
10 admitted it or not.

11 THE COURT REPORTER: I don't have it in, Judge.

12 JUDGE SANDRON: You don't. Okay. Any objections to it
13 with the understanding that it may not be verbatim for what was
14 in effect in late 2019?

15 MS. PENDER: No objection.

16 JUDGE SANDRON: All right. Hearing no objections, the
17 document is received on that basis.

18 **(Respondent Exhibit Number 17 Received into Evidence)**

19 Q BY MS. LANOUEITE: Now, what is the responsibility with
20 the -- for the CSS supervisors if they are short-staffed on
21 their shift?

22 A Usually, they start calling on other CSS if they can show
23 up to work in the shift which is short. Or if they cannot
24 call, they -- they usually they call me, and I will come over
25 to pitch in for the assignment. Or they if only one person

1 they will do the same; they will cover their assignment.

2 Q Okay. And who -- who makes the decision which of those
3 choices are followed?

4 A The supervisor.

5 Q Are you in the building during the night shift?

6 A No. 11 to 7. no.

7 Q How do CSS supervisors assign work to their employees?

8 A We do have a few different assignments. We have a closed
9 unit where the supervisory will be assigned to someone. We
10 have the increased supervision or 15-minutes check. The -- the
11 supervisor will assign someone for the increased supervision.
12 We have a closed visual observation or one-to-one. Depends on
13 the number we have in that day, the CSS supervisor will assign
14 them and for the break person and for the front desk.

15 Q I want to show you what's been marked as Exhibit R-44.
16 And ask if you recognize it.

17 **A** Yes. I do.

18 Q And what is contained in Exhibit R-44?

19 A In that day we had an increased supervision on closed
20 unit.

21 Q And Mr. DeAbreu, just what is this document? What is the
22 document?

23 A I'm sorry. This is the assignment and break shift
24 combined. It's the assignment sheet.

25 Q And who is this -- who's -- is this document R-44 without

1 the writing in it an official document of Northeast Center?

2 A Yes, this is official.

3 Q Okay.

4 A Because it is where you can have the accountability where
5 the CSS is working.

6 Q And who uses R-44 in the course of their duties?

7 A The -- the supervisor, so they can supervise their group.

8 Q Mr. DeAbreu, I'm going to ask that they scroll through
9 this document so you can see it. Or you can look at the binder
10 on your desk if that's easier.

11 JUDGE SANDRON: Maybe that might be easier, because
12 there's so many pages, right?

13 Q BY MS. LANOUE: Mr. DeAbreu, in the office that you're
14 in, there is a binder, a black binder with tabs.

15 A Yes.

16 Q If you look at the tab that says 44.

17 A Okay. One second, please.

18 Q Sure.

19 A Yes. Okay.

20 Q Okay. Are -- are the documents in R-44 all records of
21 Northeast Center?

22 A Yes.

23 Q And are those records all made by CCS supervisor Josh
24 Endy?

25 A That's correct.

1 MS. LANOUEETTE: Offer Exhibit R-44.

2 JUDGE SANDRON: Any -- any voir dire or objections?

3 MS. PENDER: I have a voir dire, Your Honor.

4 JUDGE SANDRON: Go ahead.

5 MS. PENDER: Pull it up on my --

6 **VOIR DIRE EXAMINATION**

7 Q BY MS. PENDER: Mr. -- Mr. DeAbreu, would anyone other
8 than the supervisor write on the assignment and break sheet?

9 A No.

10 Q For example --

11 A The supervisor -- (Indiscernible, simultaneous speech) --

12 Q Sorry.

13 A You can finish your question.

14 Q Thank you. If -- if someone -- if someone's duty for the
15 night is to provide breaks for other staff, and they go to
16 someone and that person refuses a break, who would record on
17 this form that the break was refused?

18 A The supervisor has to be informed and --

19 Q Who would write it?

20 A The -- the CSS can write. Received the break person can
21 write the -- the refusal of the breaks.

22 JUDGE SANDRON: And -- and just so we have it, what --
23 what period are these forms, Ms. Lanouette -- what period of
24 time are they representing?

25 **RESUMED DIRECT EXAMINATION**

1 Q BY MS. LANOUEETTE: Mr. DeAbreu, what is the date of the
2 first form?

3 A It's January 4th, 2019.

4 Q And what is the date of the last form? It might be easier
5 if you'd look in the book.

6 JUDGE SANDRON: Well, actually I think you can -- I mean,
7 it's -- it's in the documents if you wanted to see it.

8 MS. LANOUEETTE: If you're okay with me rep --

9 JUDGE SANDRON: Yes, you can.

10 MS. LANOUEETTE: And these are for the year of 2019.

11 JUDGE SANDRON: Okay. Fine.

12 THE WITNESS: Its 11 --

13 MS. LANOUEETTE: Yes.

14 THE WITNESS: -- 7/2019, the last one.

15 MS. PENDER: Okay. I have no objection, Your Honor.

16 JUDGE SANDRON: Any objections?

17 MS. TUMINARO: No objection.

18 MS. JOSLIN: No objection, Your Honor.

19 JUDGE SANDRON: All right. Hearing no objections, the
20 document is received.

21 **(Respondent Exhibit Number 44 Received into Evidence)**

22 Q BY MS. LANOUEETTE: Mr. DeAbreu, I'm now going to show
23 what's been marked as Respondents Exhibit R-45, and again its
24 large document. And I will ask if you recognize this document?

25 A Yes.

1 Q What is this document?

2 A This is a document where all the information has to be
3 passed between supervisors. For instance, if you had a code
4 rainbow, which the definition is for behaviors. Okay. We have
5 the moon, when -- when a neighbor is missing the building, we
6 have -- you know, it has to be called. And when we have the --
7 the change for the status, when neighbors has to be placed on
8 increased supervision and a one-to-one. And we have also in
9 this form when someone call out for the next shift, when
10 someone call in say will be late for the next shift. So all of
11 the information is given to -- to the -- the next shift
12 supervisor by the previous supervisor -- supervisor for the
13 previous shift.

14 Q And -- and this document is made in the -- during the
15 course of business of Northeast Center?

16 A That's correct.

17 MS. LANOUE: Okay. Offer Exhibit R-45.

18 JUDGE SANDRON: And again, this is for the calendar year
19 2019?

20 MS. LANOUE: It is, Your Honor.

21 THE WITNESS: Yes.

22 MS. PENDER: No objection.

23 MS. TUMINARO: No objection.

24 JUDGE SANDRON: Hear -- hearing no objections, the
25 document is received.

1 **(Respondent Exhibit Number 45 Received into Evidence)**

2 Q BY MS. LANOUE: Mr. DeAbreu, do you hold meetings for
3 your shift -- your supervisors?

4 A Yes, I do.

5 Q In 20 -- October and November -- well, in 2019,
6 approximately, how often did you hold meetings for supervisors?

7 A I -- I can't recall. We had a meeting, but I can't recall
8 exact the dates.

9 Q I'm going to show you what's been marked as Exhibit 47.
10 And asked -- R-47, and ask if you recognize it? And she will
11 put this one up on the screen. You can probably see it there.

12 A Yes. I recognize. In the beginning of the year of 2019.
13 Yes.

14 Q Okay. You have -- who were the individuals listed as
15 required attendees? What is their --

16 A I'm sorry.

17 Q The individuals who are listed as required attendees, what
18 is their position at Northeast Center?

19 A Supervisors.

20 Q Okay. I'll show you the second page of Exhibit 47.

21 A Yes.

22 Q When did you send this to the supervisors?

23 A Yes.

24 Q When?

25 A When? This -- I was send for the meeting on January 2nd,

1 2019.

2 Q Okay. Who sent an email on January 2nd, 2019?

3 A I did. And I received a answer from Mr. Joshua Endy on
4 Wednesday, January 2nd, 2019, saying about the supervisor
5 meeting, "Okay, I'll be there."

6 Q Okay. If you look below that, when does it indicate you
7 sent the invitation?

8 A December 31st, 2018.

9 MS. LANOUEETTE: Okay. Offer Exhibit 47.

10 JUDGE SANDRON: Any objections?

11 MS. PENDER: No objection.

12 JUDGE SANDRON: All right. The document is received.

13 **(Respondent Exhibit Number 47 Received into Evidence)**

14 Q BY MS. LANOUEETTE: Okay. Mr. DeAbreu, do CSS supervisors
15 keep quality assurance documents?

16 A Can you explain little bit more (audio interference).

17 Q Sure. In fact, it might be easier --

18 MS. LANOUEETTE: And I may have to screen share this one.

19 I don't believe Exhibit R-58 is in the group.

20 JUDGE SANDRON: Yes. Oh, I see.

21 MS. LANOUEETTE: Okay. So I will screenshare that one.

22 Give me just a moment. Where is that page?

23 Q BY MS. LANOUEETTE: Mr. DeAbreu, I'm going to show you
24 what's been marked as Exhibit R-58. And ask if you recognize
25 this document?

1 A Oh, yes, I do.

2 Q Okay. And what is this document?

3 A This -- this is the CSS supervisor daily shift report. Is
4 the report is when we don't have any code calls has to be
5 marked. If we have any code calls, the supervisor has to write
6 the -- the resident neighbor name, what type of the code, what
7 time it was called, and what time was cleared.

8 Q Okay. Who fills out the documents contained in Exhibit
9 R-58?

10 A The CSS supervisors.

11 Q Okay. And how is this document then used at Northeast
12 Center?

13 A Is using to show the daily -- the daily basis what the
14 CS -- the CSS supervisor has to do for the -- their job in
15 the -- in the case where he stands has -- if everything during
16 the -- the shift was okay. Like you can see, if break schedule
17 was maintained, is the schedule not maintained and why, if
18 anything was called. So it is that type of documentation.

19 Q Okay.

20 JUDGE SANDRON: Is there a -- just -- it says on the top,
21 "Filed copies in supervisor's office". What -- where is --
22 where is that office?

23 THE WITNESS: Oh, I -- I will explain.

24 JUDGE SANDRON: Yes.

25 THE WITNESS: The cops of the supervisors -- because the

1 supervisor has no office. So they -- they have to keep a copy
2 for them. They are the ones they send to myself and they --
3 they provide also for the social worker.

4 JUDGE SANDRON: I see. How -- how do they transmit the --
5 the document?

6 THE WITNESS: It is done by copy, and they deliver it for
7 each person.

8 JUDGE SANDRON: So they deliver hard -- hard copies?

9 THE WITNESS: That's correct.

10 Q BY MS. LANOUE: Do CSS employees have an office at
11 Northeast?

12 A No.

13 Q Okay. Where is the CSS supervisor's office located?

14 A It's located in the front of the building, across the
15 front desk.

16 Q And Mr. DeAbreu, is -- are the documents contained in
17 Exhibit R-58 official documents of Northeast Center?

18 A Yes. That's correct.

19 Q Who is the CSS supervisor on the documents in Exhibit R-
20 58?

21 A Who is the supervisor? Mr. Joshua Endy.

22 MS. LANOUE: Offer Exhibit R-58, and I will, again, say
23 it is for 2019.

24 JUDGE SANDRON: Any objections?

25 MS. PENDER: No objections.

1 MS. TUMINARO: No objection.

2 JUDGE SANDRON: The document is received.

3 **(Respondent Exhibit Number 58 Received into Evidence)**

4 Q BY MS. LANOUEETTE: Mr. DeAbreu -- it won't stop sharing.

5 If a CSS supervisor has a shortened shift, can they ask someone
6 to stay?

7 A They can ask, but they cannot force.

8 Q They can ask but not force?

9 A That's correct.

10 Q If that staying results in overtime, can they approve the
11 overtime?

12 A Oh, yes. They can approve the overtime so they can
13 provide better care for the resident neighbors. We have to
14 have such -- such a number of people to work in each shift.

15 Q We've heard testimony that some -- that CSS supervisors
16 only approve overtime when you're out of the building or on
17 vacation. If -- if you sign -- have you ever denied approval
18 for overtime that a CSS supervisor asked for?

19 A The only time we can -- we can deny is when we have over a
20 number of people.

21 Q And how many people would that be for the night shift?

22 A It's according to your needs. Can be seven. Can be
23 eight. Can be nine. Between seven and nine.

24 Q Who makes the decision if they have enough people on the
25 night shift?

1 A The supervisor can make the decision.

2 JUDGE SANDRON: Have -- have you ever disagreed with a
3 decision of a supervisor regarding the need to have someone
4 work overtime?

5 THE WITNESS: Not usually, because you have to support the
6 supervisor. And usually they know how many people they need
7 for every shift for every, you know, day and the week.

8 Q BY MS. LANOUEETTE: Have you ever disagreed with Josh Endy
9 regarding the need for somebody to work overtime?

10 A No. I don't recall that.

11 Q That's -- I'll show you what has --

12 MS. LANOUEETTE: Your Honor, may I ask is Exhibit R-55 in
13 evidence?

14 JUDGE SANDRON: I don't think it's been admitted yet.

15 MS. LANOUEETTE: Okay. Then may I show the witness Exhibit
16 R-55?

17 Q BY MS. LANOUEETTE: And do you have that in front of you,
18 Mr. DeAbreu?

19 A Yes.

20 Q Okay. What is --

21 JUDGE SANDRON: Before -- can we have it pulled up on the
22 screen.

23 Q BY MS. LANOUEETTE: What are the documents --

24 JUDGE SANDRON: Here it is.

25 Q BY MS. LANOUEETTE: -- that are R-55?

1 A It's the extra shift of a -- available to -- for CSS
2 work --

3 Q Okay.

4 A -- as overtime.

5 Q Okay. And who signed the two overtime approvals in R-55?

6 A Mr. Joshua Endy.

7 MS. LANOUEETTE: Okay. Offer Exhibit R-55.

8 JUDGE SANDRON: Are these illustrative or for illustration
9 purposes, or are those the only times that he's done it over a
10 certain period? Or if you know, because its only two.

11 MS. LANOUEETTE: Yes. We're offering them as illustrative.
12 I don't believe the documents are kept, necessarily. But I
13 will ask Mr. DeAbreu that.

14 Q BY MS. LANOUEETTE: Mr. DeAbreu, did you make a search for
15 documents related to Mr. Endy approving overtime?

16 A I'm sorry. Can you repeat, please?

17 Q Did you make a search for documents related to Mr. Endy
18 approving overtime?

19 A No. It's like I said, as needed he would approve the
20 overtime.

21 JUDGE SANDRON: Maybe -- maybe we can ask him --

22 THE COURT REPORTER: Judge, can you lift your mic up,
23 please?

24 JUDGE SANDRON: Yes, I think I -- I think -- Ms. -- Ms.
25 Hammonds made me the host again. I don't know if -- oh, there

1 you are. She's on mute.

2 MS. LANOUE: Ms. Hammonds is muted.

3 MS. HAMMONDS: Sorry. My internet restarted and it
4 knocked me off.

5 JUDGE SANDRON: Oh, that's okay. I thought we lost her
6 for a minute.

7 MS. HAMMONDS: If you could make me the host again.

8 JUDGE SANDRON: Okay. Let me go back to you. Let's see
9 if I can find the participants. Let me get you back there
10 more. Okay. You're back to being in charge. There you are.

11 MS. HAMMONDS: Thanks.

12 JUDGE SANDRON: Okay. Maybe we should ask the witness.
13 Do you normally keep those forms after they're submitted?

14 THE WITNESS: Yes.

15 Q BY MS. LANOUE: For -- for how long do you keep them?

16 A Probably a year, two years. But we don't have a normal --
17 normally, we don't have use for the extra shift. We have to
18 use just to check for the payroll to check every -- if
19 everybody was present after we approved for attendance issue.

20 JUDGE SANDRON: All right.

21 Q BY MS. LANOUE: So once you met that to payroll,
22 normally there's no reason to keep that document; is that
23 right?

24 A No. We keep the document, like I said, for a couple of
25 years.

1 Q Okay.

2 A And now when you're talking about for the extra shift.

3 JUDGE SANDRON: Right.

4 Q BY MS. LANOUE: Is there a difference between approval
5 of overtime for an extra shift and approval of overtime just to
6 cover a shift?

7 A Not really. The approval -- the approval is a once only.
8 Is one only. When you are approved to -- to have someone to --
9 to work in the shift as needed.

10 Q Okay. Oh. So once that exhibit is signed, then that
11 individual can work the extra shift anytime they're needed?

12 A That's correct. As needed in that day and that shift.

13 Q Okay.

14 A Again, I (audio interference).

15 Q Did Mr. Endy only approve people for overtime on two
16 occasions in 2019?

17 A I don't recall. I don't recall, because every time the
18 supervisor has -- needs to be -- to approve OT, they do. I
19 really don't recall.

20 Q Do the supervisors sometimes approve the overtime and
21 leave the sheet for you to sign?

22 A Well, sometimes the -- the extra shift assigned and I
23 approve the extra shift. You know, we work as team, you know.

24 Q Okay.

25 A It's not just the supervisor. I sign also as needed.

1 Q When -- when someone -- when a night shift supervisor
2 comes in at night and there are not enough employees to work
3 the shift, are you here?

4 A Well, if they don't have enough people, like I said
5 before, they -- they will try to call someone.

6 Q Mr. DeAbreu, are you here when they come in?

7 JUDGE SANDRON: Right. I think we need --

8 THE WITNESS: I --

9 JUDGE SANDRON: -- wait. I think we need to put it on the
10 record. This witness is at the company facility when he says
11 here, right?

12 MS. LANOUE: Oh. I'm sorry. Yes.

13 Q BY MS. LANOUE: Mr. DeAbreu, when the night shift
14 supervisors find out they are short-staffed, are you at the
15 company facility at that time?

16 A No.

17 Q Okay.

18 A Night shift, no.

19 Q Do they have the authority to ask someone to cover the
20 short shift?

21 A Yes.

22 Q And if that results in overtime, do they need to call you
23 to get approval for that overtime?

24 A No.

25 Q Okay.

1 JUDGE SANDRON: Okay. You offered Respondent's Exhibit
2 58. I'm not sure, you know, with just two --

3 MS. LANOUEETTE: You know, Your Honor --

4 JUDGE SANDRON: -- forms of that it would mean much.

5 MS. LANOUEETTE: I think it's not 58. I think it's 52 --

6 JUDGE SANDRON: Oh 50 --

7 MS. LANOUEETTE: -- and 55.

8 JUDGE SANDRON: No, wait. Let's see.

9 MS. LANOUEETTE: I'm sorry. 55.

10 JUDGE SANDRON: Oh, yeah. 55.

11 MS. LANOUEETTE: And we are only offering it for
12 illustrative purposes. I believe Mr. Endy testified regarding
13 it as well.

14 JUDGE SANDRON: I -- I mean, for -- for -- for purposes of
15 illustration.

16 MS. LANOUEETTE: I (Indiscernible, simultaneous speech)
17 overtime form looks for -- looks like.

18 JUDGE SANDRON: We obviously don't have a complete record.

19 MS. LANOUEETTE: We do not.

20 MS. PENDER: Can I have some voir dire, Your Honor, if I
21 may?

22 MS. LANOUEETTE: Sure.

23 JUDGE SANDRON: Yes. Go ahead.

24 MS. PENDER: Thank you.

25 **VOIR DIRE EXAMINATION**

1 Q BY MS. PENDER: Mr. DeAbreu, if someone stays to cover a
2 shift at the CSS supervisor's request, does this form in R-55
3 need to be filled out then?

4 A That's correct. Absolutely.

5 MS. PENDER: I have no objection for the illustrative
6 nature of the -- the document.

7 MS. TUMINARO: No Objection.

8 JUDGE SANDRON: That limited purpose, the document is
9 received.

10 **(Respondent Exhibit Number 55 Received into Evidence)**

11 MS. LANOUEETTE: Okay.

12 **RESUMED DIRECT EXAMINATION**

13 Q BY MS. LANOUEETTE: Mr. DeAbreu, what is the authority of
14 CSS supervisors regarding discipline?

15 A They have the authority to discipline CSS.

16 Q What is the process for them to do so?

17 A Well, if he has attendance, insubordination, performance,
18 they have the authority to -- for disciplinary action -- to
19 give disciplinary action for the CSS.

20 Q How do they do that?

21 A When of course the situation.

22 Q Okay.

23 A It is --

24 Q How do they --

25 MS. TUMINARO: I'm sorry. I didn't hear that. What --

1 I'm sorry. What was the answer? I didn't hear it.

2 THE WITNESS: I'm sorry. When of course the situation,
3 when someone has a problem with attendance and insubordination,
4 performance.

5 Q BY MS. LANOUE: Okay. How do they go about giving
6 discipline?

7 A They give the discipline, and usually they bring the
8 person in my office, and we will discuss between myself, the
9 CSS, and the supervisor, so that we -- they can do better in
10 the next time.

11 Q When a CSS supervisor gives discipline, are they just
12 filling out a form or are they making a recommendation to you?
13 What are they doing?

14 A Well, they fill out the form and they do a recommendation.
15 The form has a recommendation.

16 JUDGE SANDRON: Well, I think we have to -- as I
17 understand it, there are different levels of discipline. And
18 what's the first level of discipline? Is it counseling or
19 verbal? Is -- is that right? I don't think he can hear me.

20 Q BY MS. LANOUE: Mr. DeAbreu, are there levels of
21 discipline at the facility?

22 A Levels?

23 JUDGE SANDRON: You know, steps. Steps. Or he can't hear
24 me.

25 THE WITNESS: Yes.

1 JUDGE SANDRON: And -- okay.

2 THE WITNESS: Yes, we have notification, we have a verbal,
3 we have a written, and we have suspension, and we have
4 termination.

5 JUDGE SANDRON: All right. So starting at -- at -- what's
6 the first level again, is like a counseling?

7 THE WITNESS: Notification. Notification is when the
8 first time someone does some -- has some problem with
9 performance. We explain the person how he has to act, and what
10 they can -- he can do better to avoid this -- have the same
11 error, mistake the next time.

12 JUDGE SANDRON: Now, are you involved in that first level,
13 or is it just the supervisor?

14 THE WITNESS: Yes, I've been involved, because we have
15 to -- we have to have a knowledge. We have to work as a team,
16 so we don't have a problem at all between myself, the
17 supervisors, and the CSS. So I have to support my CS -- my
18 supervisors, and in the same time I have to support the CSS.
19 At the same time supervisors support their own CSS who works
20 with them day for day. Every day.

21 JUDGE SANDRON: All right. All right. Can -- yes, go
22 ahead. But can they do like an educational meeting without you
23 on their own --

24 THE WITNESS: Yes.

25 JUDGE SANDRON: -- or do they check with you?

1 THE WITNESS: They can do -- they will inform me what they
2 did. But they can do it.

3 JUDGE SANDRON: And have they done it?

4 THE WITNESS: Unless -- unless there's something that very
5 insidious, but normal attendance, something like that, they can
6 do it.

7 JUDGE SANDRON: All right. I'm not sure we're going to
8 able to finish with the witness today, but maybe you can finish
9 with the line of questions. And then we -- we --

10 MS. LANOUEITE: I'll try.

11 JUDGE SANDRON: -- could finish him tomorrow morning.

12 MS. LANOUEITE: Give me one --

13 Q BY MS. LANOUEITE: Are CSS supervisors responsible for the
14 performance of employees on their shift?

15 A Yes. They have the responsibility. Is one -- one is very
16 important thing is their performance.

17 Q How are CSS supervisors held responsible for the
18 performance of employees on their shift?

19 A Guiding the CSS to do the right thing.

20 Q Have you ever disciplined or counseled a CSS supervisor
21 about something their employee has done on the shift?

22 A Yes.

23 Q When?

24 A I can't recall when, but I have.

25 Q Can you recall what it was about? How about breaks? Have

1 you ever counseled CSS supervisors about employees missing
2 breaks?

3 A Yes. I have too. Because always I ask why they're
4 refusing. Especially for -- you know, the half an hour break,
5 because it's the law. They have to have a break.

6 Q Okay. How about for documentation? Have you ever
7 counseled or disciplined a CSS supervisor because employee
8 documentation was not appropriate?

9 A Oh, yes.

10 Q Can you recall a specific instance where that happened?

11 A We have increased supervision, for instance, has to be
12 initialed by the CSS. We have the CVO or one-to-one. It's
13 what I recall.

14 Q Okay.

15 A And with the documentation, it's very important
16 documentation.

17 Q Do you remember who the CSS supervisor was that you
18 counseled?

19 A Exactly, no. But I have -- I think most of the
20 supervisors I think I did already, you know.

21 Q Did you do a performance review for Mr. Endy?

22 A Yes.

23 Q I'm going to show what has been marked as Exhibit R-48.
24 And ask if you recognize it?

25 A Yes. I do.

1 Q What is Exhibit R-48?

2 A It's an employee performance review.

3 Q When did you do this review?

4 A The review -- the review was done October 30th, 2019.

5 Q And there is a note at the top that indicates what? It
6 just --

7 A It says Joshua Endy was called -- informed he had a
8 review, his performance evaluation. And he -- he -- he told to
9 come to my office, he should come to my office, so we can go
10 over it for this evaluation. And I remember well. He
11 response was. it's about the money, and I said no, it's about
12 performance. And he never showed up in my office to go over it
13 with me for this evaluation.

14 JUDGE SANDRON: So did you fill this whole evaluation out?
15 All of that is your -- you filled all that in?

16 THE WITNESS: Handwriting?

17 JUDGE SANDRON: Yes.

18 THE WITNESS: (audio interference).

19 Q BY MS. LANOUEETTE: Mr. DeAbreu, did you make Exhibit R-48
20 in the ordinary course of your duties at Northeast?

21 A Yes.

22 MS. LANOUEETTE: Okay. Offer Exhibit R-48?

23 JUDGE SANDRON: Can -- can we get it though, when it's
24 filed, you know, large enough so that it's all legible?
25 Because I -- I think it's a little hard to --

1 MS. LANOUEETTE: It's a complete document. I think that
2 may just be on the screen.

3 JUDGE SANDRON: Oh, I see.

4 MS. LANOUEETTE: Full piece of paper when it's --

5 MS. TUMINARO: It looks like it's cut off at the bottom.
6 There's that last sentence, which appears to be -- do you have
7 a different copy?

8 MS. LANOUEETTE: I can look and see.

9 JUDGE SANDRON: Yeah, so we make sure its complete. But
10 assuming we can get it in complete form, are there any
11 objections to the document?

12 MS. PENDER: No objection.

13 MS. TUMINARO: Just some voir dire, Your Honor.

14 JUDGE SANDRON: Yes. Go ahead.

15 **VOIR DIRE EXAMINATION**

16 Q BY MS. TUMINARO: Mr. DeAbreu, is this -- is all of the
17 handwriting on this document yours?

18 A Yes, ma'am.

19 Q Okay. And did you perform annual evaluations of Mr. Endy?

20 A Yes.

21 Q And so you would have -- how long were you his supervisor?

22 A I'm sorry. Can you repeat, please?

23 Q How long were you his supervisor?

24 A I was his supervisor, I think, for around three years.

25 Two years. Three years. I don't recall exactly how many I was.

1 Q And you did an -- an evaluation of him every year?

2 A For the period, yes. Over the period of time, yes, 2018/
3 2019.

4 Q Did -- did anyone direct you to write up this evaluation
5 on or about October of 2019?

6 A No.

7 MS. TUMINARO: No objections.

8 JUDGE SANDRON: The document is received.

9 **(Respondent Exhibit Number 48 Received into Evidence)**

10 **RESUMED DIRECT EXAMINATION**

11 Q BY MS. LANOUEETTE: Mr. DeAbreu, what is the dress code for
12 CSS supervisors on the night shift?

13 A I'm sorry. You're breaking down. Sorry.

14 Q Sorry. What is the dress code for CSS supervisors on the
15 night shift?

16 A Is dress professionally.

17 JUDGE SANDRON: What -- what do -- what do regular CSS
18 employees -- do they have a certain dress code?

19 THE WITNESS: They have regular pants, regular shirts.

20 JUDGE SANDRON: And -- and do the supervisors dress
21 differently than -- than the other CSS employees?

22 THE WITNESS: Not necessarily.

23 Q BY MS. LANOUEETTE: Okay. Mr. DeAbreu, I'm going to show
24 what's been marked as Respondents Exhibit 18. And ask if you
25 recognize these documents? She's going to scroll through them

1 if you want to look on the screen or you can look in the
2 notebook.

3 A Yeah. It's a disciplinary action. Report the action.

4 Q Okay. Who gave the disciplinary actions in Exhibit R-18?

5 A As far as I can see, it was the other supervisor on night
6 shift, Ms. Josie Cruz.

7 Q If I show you page -- yeah, that -- that one right there.
8 Page 8. Whose signature is that one?

9 A Yes. Is another supervisor for 3 to 11.

10 Q And what is her name?

11 A It's Charnita Carlisle.

12 JUDGE SANDRON: Do we have the spelling already?

13 Q BY MS. LANOUEETTE: I believe --

14 MS. PENDER: Yes.

15 JUDGE SANDRON: If you could spell it?

16 MS. PENDER: Its already in the record.

17 JUDGE SANDRON: Okay, fine.

18 Q BY MS. LANOUEETTE: And on the next page, who -- who signed
19 that discipline?

20 A It was Alyce Mannello, is another supervisor.

21 Q Okay.

22 JUDGE SANDRON: And -- and that name's in the record as
23 well?

24 MS. LANOUEETTE: I don't know if that one is, Your Honor.

25 Alyce is A-L-Y-C-E. Mannello is M-A-N-N-E-L-L-O.

1 JUDGE SANDRON: Thank you.

2 Q BY MS. LANOUEETTE: Page 11. I'm going to show page 11.

3 And ask if you recognize that signature?

4 A Yes. It is another CSS, 7 to 3. Her name is Milagros
5 (phonetic) Feliciano.

6 JUDGE SANDRON: I -- I think her names already in the
7 record, but do you want to just spell it?

8 MS. LANOUEETTE: I don't know how to spell her first name.
9 Her last name is F-E-L-I-C-I-A-N-O.

10 JUDGE SANDRON: Thank you.

11 Q BY MS. LANOUEETTE: And we're going to -- Mr. DeAbreu, I'm
12 going to show you page 17. Whose signature is that?

13 A It is another supervisor, Mr. Roderick Brown.

14 Q And what shift does he normally supervise?

15 A 3 to 11.

16 JUDGE SANDRON: All right. Why -- why don't you just
17 spell it so we have it in the record.

18 MS. LANOUEETTE: Roderick is R-O-D-E-R-I-C-K. Brown,
19 B-R-O-W-N.

20 JUDGE SANDRON: Okay.

21 Q BY MS. LANOUEETTE: I'm going to show you page 27. Ask if
22 you recognize this signature on page 27?

23 A Alyce Mannello.

24 Q Okay. And that was first person that -- that we had. Is
25 that the same person? I think.

1 A She's the supervisor 7 to 3.

2 Q Mr. DeAbreu, do you know why Mr. Endy does not have any
3 disciplines in here?

4 A No, I don't. And he was informed. He was authorized to
5 do so.

6 Q Off -- are the exhibit -- are the documents contained in
7 Exhibit R-18 official documents of the faculty?

8 A Yes.

9 MS. LANOUEITE: Offer Exhibit R-18.

10 JUDGE SANDRON: And -- and for what -- for what period?
11 What do the rep -- are they -- for what period are they --

12 MS. LANOUEITE: I believe this is --

13 JUDGE SANDRON: -- complete records for -- because they're
14 out of date. I think they're different dates. Do we know what
15 period they represented? Whether they're complete records
16 of --

17 MS. LANOUEITE: They are not a complete record. We're
18 offering them solely for illustrative purposes.

19 JUDGE SANDRON: We're showing that CSS supervisors --

20 MS. LANOUEITE: Complete disciplinary reports.

21 MS. PENDER: Your Honor, I'm going to object on the ground
22 that almost all of these were filled out after Mr. Endy was
23 terminated.

24 JUDGE SANDRON: It would -- how -- how many?

25 MS. JOSLIN: We would --

1 MS. PENDER: I believe only pages 17 and 18 pre-date Mr.
2 Endy's termination. I think all the rest are from after
3 November 11th of 2019.

4 MS. LANOUEETTE: Didn't we have a few --

5 JUDGE SANDRON: Does -- does 17 and 18 are --

6 MS. PENDER: That's from -- from my review, Your Honor.

7 JUDGE SANDRON: All right.

8 MS. PENDER: That's what I (Indiscernible, simultaneous
9 speech) --

10 JUDGE SANDRON: All right. All right. If -- and what date
11 was he terminated?

12 MS. PENDER: November 11th of 2019.

13 JUDGE SANDRON: So -- so if -- if we limit --

14 MS. LANOUEETTE: Your Honor?

15 JUDGE SANDRON: Yes?

16 MS. LANOUEETTE: I -- I will not offer at this time.

17 JUDGE SANDRON: All right.

18 MS. LANOUEETTE: We may need to revise the exhibit.

19 JUDGE SANDRON: All right. That's fine. So we'll just
20 leave it pending.

21 MS. PENDER: Ms. Lanouette, did you offer R-48?

22 JUDGE SANDRON: I think that -- that's been admitted, I
23 believe.

24 MS. PENDER: It was the evaluation.

25 MS. LANOUEETTE: I thought I had offered it and it was

1 admitted.

2 JUDGE SANDRON: I think it was. It was admitted.

3 THE COURT REPORTER: I have R-48 as received.

4 MS. PENDER: Okay.

5 JUDGE SANDRON: Okay. Thank you, Mr. Baker.

6 MS. LANOUEETTE: Your Honor, at this time I'm going to move
7 to a different topic.

8 JUDGE SANDRON: All right.

9 MS. LANOUEETTE: Would now be an appropriate time to quit?

10 JUDGE SANDRON: Probably. I -- I assume that the next
11 subject will take some time, and we're not going to be able to
12 finish with his testimony today in any event. So I think it
13 might be a good time to recess for the evening. And then we'll
14 resume tomorrow at 10 a.m. and you can finish direct. And then
15 we can have cross-examination.

16 Is -- is there anything from any counsels before we go off
17 the record for the day?

18 MS. TUMINARO: I just have a direction to the witness not
19 to discuss his testimony.

20 JUDGE SANDRON: Yes. We'll -- we'll leave it up to Ms.
21 Lanouette to explain to the witness the rules regarding talking
22 to the other witnesses. And also, she knows the ethical
23 limitations regarding talking to the witness before he resumes
24 his testimony. We'll -- we'll entrust her with that --

25 MS. TUMINARO: Okay.

1 JUDGE SANDRON: -- obligation. All right. We'll see
2 everybody tomorrow morning. Have a good evening.

3 MS. PENDER: Thank you, Judge.

4 MS. LANOUE: Thank you, Your Honor.

5 (Whereupon, the hearing in the above-entitled matter was
6 recessed at 4:49 p.m. until Thursday, January 28, 2021 at 10:00
7 a.m.)

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C E R T I F I C A T I O N

This is to certify that the attached proceedings, via Zoom Videoconference, before the National Labor Relations Board (NLRB), Region 3, in the matter of NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury and 1199 SEIU United Healthcare Workers East, Case Number 03-CA-252090, held at the National Labor Relations Board, Region 3, 11A Clinton Avenue, Albany, New York 12207, on January 27, 2021, at 10:03 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



THOMAS BAKER
Official Reporter

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

NCRNC, LLC D/B/A Northeast	Case Nos.	03-CA-252090
Center for Rehabilitation and		03-CA-254186
Brain Injury,		03-CA-255155

Employer,

and

1199 SEIU United Healthcare
Workers East,

Petitioner

and

Tara Golden

An Individual.

Place: Albany, New York (via Zoom videoconference)

Dates: January 28, 2021

Pages: 625 through 863

Volume: 4

OFFICIAL REPORTERS

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Phoenix, AZ 85020
(602) 263-0885



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

NCRNC LLC DBA NORTHEAST CENTER
FOR REHABILITATION AND BRAIN
INJURY,

Employer,

and

1199 SEIU UNITED HEALTHCARE
WORKERS EAST,

Petitioner

and

TARA GOLDEN,

An Individual.

Case Nos. 03-CA-252090
 03-CA-254186
 03-CA-255155

The above-entitled matter came on for hearing, via Zoom videoconference, pursuant to notice, before **IRA SANDRON**, Administrative Law Judge, at the Nation Labor Relations Board Region 3 via videoconference, the National Labor Relations Board, Region 3, 11A Clinton Avenue, Albany, New York 12207, on **Thursday, January 28, 2021, 10:04 a.m.**



1 A P P E A R A N C E S

2 **On behalf of the Employer:**

3 **DAWN LANOUILLE, ESQ.**
4 HINMAN, HOWARD & KATTELL, LLP
5 700 Security Mutual Building
6 80 Exchange Street
7 Birmingham, NY 13901
8 Tel. (607)231-6917
9 Fax. (607)723-6605

10 **On behalf of the Union:**

11 **AMELIA TUMINARO, ESQ.**
12 GLADSTEIN, REIF & MEGINNISS
13 39 Broadway
14 Suite 2430
15 New York, NY 10006
16 Tel. (212)228-7727
17 Fax. (212)228-7654

18 **On behalf of Ms. Golden:**

19 **LISA JOSLIN, ESQ.**
20 **NANCY WILLIAMSON, ESQ.**
21 GLEASON, DUNN, WALSH & O'SHEA
22 40 Beaver Street
23 Albany, NY 12207
24 Tel. (518)432-7511
25 Fax. (518)432-5221

26 **On behalf of the General Counsel:**

27 **ALICIA PENDER, ESQ.**
28 NATIONAL LABOR RELATIONS BOARD
29 130 S. Elmwood Avenue
30 Suite 630
31 Buffalo, NY 14202-2465
32 Tel. (716)551-4931
33 Fax. (518)431-4157

34

35

36

37



I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Marcos DeAbreu	630	640,647,	658		637,640,646
		654			
Carolyn Carchidi	667,671,	711,732,			670,674,696
	696	748			
Josie Cruz	758	785,789			
Keith Peraino	793,829	835,847	856	858	

E X H I B I T S

<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
General Counsel:		
GC-7	643	647
GC-16	729	730
Respondent:		
R-18	630	632
R-53	635	637
R-20		640
R-44	762	
R-45	642	
R-48	647	
R-28	668	671
R-50	671	677
R-2	694	695
R-3	695	696
R-5	698	699
R-15	707	709
R-6	722	
R-46	774	775
Union:		
U-3	739	745

1	U-14	838	839
2	U-15	842	842
3	U-7	844	847
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1 P R O C E E D I N G S

2 JUDGE SANDRON: This is continuation of the direct
3 examination of Mr. DeAbreu. Mr. DeAbreu, you're still under
4 oath.

5 Okay. Please proceed, Ms. Lanouette.

6 MS. LANOUEETTE: Okay.

7 Whereupon,

8 MARCOS DEABREU

9 having been previously sworn, was called as a witness herein
10 and was examined and testified as follows:

11 RESUMED DIRECT EXAMINATION

12 Q BY MS. LANOUEETTE: Mr. DeAbreu, I -- I wanted to show
13 you -- yesterday we showed you some documents at the end of the
14 day. There was a bit of a problem with Exhibit 18.

15 MS. LANOUEETTE: And Your Honor, while I have not been able
16 to paginate it yet, I -- I did find the error.

17 Q BY MS. LANOUEETTE: So I want to show you what's been
18 marked as Exhibit 18. And I will share screen that for
19 everyone.

20 JUDGE SANDRON: Okay. So -- so this is a -- a revised
21 version of -- of 18?

22 MS. LANOUEETTE: It is.

23 JUDGE SANDRON: Okay. So we'll -- we'll consider it
24 substituted for the one that was marked previously.

25 MS. LANOUEETTE: Thank you, Your Honor.

1 Q BY MS. LANOUEETTE: There it is. Mr. DeAbreu, I'm going to
2 scroll through what has been marked as revised visit -- revised
3 Exhibit 18 and ask if you recognize the documents contained
4 herein?

5 A Yes.

6 Q And what do you recognize these documents to be -- to be?

7 A These are disciplinary actions.

8 Q Who performed these disciplines?

9 A The supervisors.

10 Q Okay. And what is the time period for revised Exhibit 18?

11 A Well, it's 12/28/2018 through 12/9/2019.

12 Q Are these official documents made at -- at Northeast
13 Center?

14 A Yes, these are the documentation -- these are
15 documentation.

16 Q All right. And are these official documents of Northeast
17 Center?

18 A Yes.

19 Q Are these documents made in the ordinary course of
20 business at Northeast Center?

21 A Yes.

22 MS. LANOUEETTE: Offer Exhibit -- revised Exhibit R-18.

23 JUDGE SANDRON: Any voir dire or objections?

24 MS. PENDER: No objection.

25 JUDGE SANDRON: All right. Hearing none, Respondent's

1 Exhibit 18, as revised, is admitted.

2 **(Respondent Exhibit Number 18 Received into Evidence)**

3 MS. TUMINARO: Can I just ask a clarifying question? So
4 yesterday, was there a different date range?

5 MS. LANOUEETTE: Yes.

6 JUDGE SANDRON: Yes.

7 MS. TUMINARO: Okay, all right. And today's date range is
8 12/28/18 to 12/9/19?

9 MS. LANOUEETTE: Yes.

10 MS. TUMINARO: Okay, thank you.

11 MS. LANOUEETTE: And I will clarify. There was -- before
12 he was terminated, and I set -- after I accidentally uploaded the
13 wrong set. Okay.

14 Q BY MS. LANOUEETTE: Now, Mr. DeAbreu, I want to turn your
15 attention to Exhibit R-52 and ask if you recognize it. And I
16 believe I will share -- I -- I can share that on my screen as
17 well. 52 -- where is it? Was it 52? Was it not? Actually,
18 I'll -- I'll --

19 JUDGE SANDRON: That -- that -- that was admitted.

20 MS. LANOUEETTE: It was? All right. Then, I -- I don't
21 need to show it to him.

22 Q BY MS. LANOUEETTE: Mr. DeAbreu, I want to turn your
23 attention, now, to the -- the time that Mr. Endy was
24 terminated. Did you -- there come a time when you received a
25 complaint regarding Mr. Endy?

1 A Complaints, some.

2 Q Okay. And in November of 2019, were you asked to schedule
3 a meeting with him?

4 A That's correct.

5 Q Okay. Who asked you?

6 A Mr. Keith.

7 Q Okay. And what did he tell you about why he needed a -- a
8 meeting with him?

9 A Because Mr. -- Mr. Joshua Endy was soliciting Union
10 authorization cards. As a CSS supervisor, he could not do
11 that.

12 Q When did the meeting occur?

13 A On November 19 -- November 11, 2019 around 7:00.

14 Q And that's 7:00 in the evening?

15 A In the evening, correct.

16 Q Okay. And how -- where did the meeting occur?

17 A Was at the administration conference room.

18 Q Okay. And how -- how did that meeting start?

19 A Mr. Keith ask Joshua if he was passing cards. His answer
20 was, yes, because he would like to see the facility doing
21 better. Keith then asked him, you could -- you cannot pass
22 cards because you are a supervisor. Mr. Joshua Endy answered
23 Keith, who you think you are to tell me that? Keith again
24 repeat, as a supervisor, you cannot pass cards. You cannot
25 take sides by law. And he mentioned you cannot use your -- use

1 your supervisory position to make people sign cards.

2 At the moment, during the meeting, Joshua became very
3 aggressive. He took his badge. And before that, he says,
4 what -- what he says was, I don't need this fucking job. He
5 took his badge, and he threw his badge on the table, get up
6 from his chair, and stormed out the door. He slammed the door
7 in the wall where -- had damage. As he was leaving, I told him
8 he was fired for insubordination and property damage. Then
9 he -- when -- when I took -- I -- I relieved him from his
10 duties because I was sit down across him and he -- he look at
11 me and he threw the badge at me on the table.

12 Q After you left the room, how did he leave the building?

13 A Oh, okay. He opened the -- the next door. We never
14 exchange any words after that. He went to the back of the
15 building. I escort him out because in that time he didn't have
16 no badge and I had to badge him out. And -- and then he went
17 out. And he -- he stood out in the back of the building. And
18 I was waiting for him coming to the front. When he did, he
19 left. And I resumed my -- my job.

20 Q Okay.

21 JUDGE SANDRON: Was there -- was anybody present but
22 the -- at that meeting, was anybody there but the three of you?

23 THE WITNESS: Yes.

24 JUDGE SANDRON: Any -- anybody else?

25 THE WITNESS: Yes. We had Keith, which is a consultant,

1 not employed by the Employer -- Employer. We had a -- someone
2 by name, Mike (phonetic). And let me -- really can recall
3 exact -- the names of what person. But I think his name was
4 Mondo (phonetic). I really don't know the status -- who is the
5 employer.

6 JUDGE SANDRON: I see. So -- so they were also present at
7 the meeting?

8 THE WITNESS: Myself, yes.

9 Q BY MS. LANOUEETTE: Okay. Mr. DeAbreu, who made the
10 decision to terminate Mr. Endy?

11 A Myself.

12 Q And why did you make that decision?

13 A Be -- because -- strictly because of his aggressive
14 actions, his insubordination, and disrespectful manner.
15 Because when he threw his badge, I was in front of him, sitting
16 down at the table, and he look at me. Every single action he
17 was -- look at me. So I think this was insubordination, and I
18 believe, you know, very aggressive actions.

19 Q Was he terminated for passing Union cards?

20 A Absolutely not.

21 Q Okay. Have you terminated other CSS employees for
22 insubordination?

23 A Oh, yes -- damage.

24 Q Could you look at what's been marked as Exhibit R-53?

25 A R-53?

1 Q Yeah, it'll be 5-3 in the binder. You know, the binder --

2 MS. TUMINARO: Can you screen share that for us?

3 MS. LANOUEITE: Probably not. I will try. Or maybe Ms.
4 Hammonds can.

5 MS. HAMMONDS: Yeah, I can. Give me one second.

6 THE WITNESS: I'm sorry. This -- this binder's full of
7 papers.

8 JUDGE SANDRON: Sorry. We'll get it on the screen.

9 MS. HAMMONDS: It was number 53?

10 MS. LANOUEITE: Yeah, 5-3.

11 THE WITNESS: Yes.

12 Q BY MS. LANOUEITE: What -- do you recognize Exhibit R-53?

13 A Yes, I do.

14 Q And what do you recognize it to be?

15 A Mrs. Destiney Gray, which was employed by us -- was
16 terminate because insubordination.

17 Q And could you describe the circumstances of her
18 termination?

19 A Yes. She was refusing her assignments -- few times
20 disrespectful manner she was talking towards her supervisor.

21 Q Okay.

22 MS. LANOUEITE: Offer Exhibit R-53.

23 JUDGE SANDRON: Could we -- could we get the spelling of
24 her name on the record?

25 MS. LANOUEITE: Yes. I'm sorry. Destiney is

1 D-E-S-T-I-N-E-Y. And Gray is G-R-A-Y.

2 JUDGE SANDRON: I -- I notice that it was in December of
3 2020, so the date was later. Are there -- an objection to the
4 document?

5 MS. PENDER: I have a voir dire, Your Honor.

6 JUDGE SANDRON: Go ahead.

7 **VOIR DIRE EXAMINATION**

8 Q BY MS. PENDER: Mr. DeAbreu, did you fill this form out?

9 A Yes, I did.

10 Q And that's your signature on the supervisor line?

11 A That's correct.

12 Q Okay.

13 MS. PENDER: No objection, Your Honor.

14 JUDGE SANDRON: Okay. If there are no objections,
15 Respondent's Exhibit 53 is received.

16 **(Respondent Exhibit Number 53 Received into Evidence)**

17 MS. TUMINARO: No objections. Maybe the -- could the
18 witness just read -- it says -- it looks like the -- the reason
19 given above in detail -- I'm having a little trouble with the
20 second sentence. Is it "manners toward supervisor"?

21 THE WITNESS: That's correct.

22 MS. TUMINARO: Thank you.

23 THE WITNESS: You're welcome.

24 Q BY MS. LANOUELETTE: Mr. DeAbreu, after Mr. Endy left the
25 facility, what did you do?

1 A I contact my administrator, Mr. Patrick Weir. And I
2 inform him what happened in the meeting. And I would like to
3 make a point he did not know this meeting was taking place in
4 advance.

5 Q Okay. And when Mr. Weir came to the facility, what, if
6 anything, did he ask you to do?

7 A I did a summary about the meeting and I gave it to Mr.
8 Weir.

9 Q Okay. I'd like to show you, now, what's been marked as
10 Exhibit R-20.

11 MS. TUMINARO: Ms. Lanouette, is it possible to upload
12 this very nice, tabbed version of your exhibits to the
13 SharePoint?

14 MS. LANOUEITE: It is not my version. Ms. Hammonds did
15 that. I will certainly make --

16 MS. TUMINARO: Oh.

17 MS. HAMMONDS: Yeah. I just created the tabs for -- to be
18 easier.

19 MS. TUMINARO: Oh, my God. That's easier. Is it possible
20 just to -- to substitute it? Because it's very useful.

21 MS. HAMMONDS: I don't -- I don't know if I can -- I'm not
22 sure. I mean, I can -- I don't know if it would be easier to
23 email it out. I don't know if I should be uploading.

24 MS. PENDER: I think it's too big to email as one PDF.

25 MS. HAMMONDS: All right. I mean, if -- if it's okay with

1 the judge, I can -- I can upload it.

2 JUDGE SANDRON: If you can, that'd be fine.

3 MS. HAMMONDS: Yeah.

4 MS. TUMINARO: Thank you.

5 MS. HAMMONDS: Um-hum.

6 MS. TUMINARO: I will learn how to do that next time. I'm
7 learning much this trial.

8 JUDGE SANDRON: Lots to learn.

9 MS. LANOUEETTE: Yeah.

10 Q BY MS. LANOUEETTE: Mr. DeAbreu, do you recognize what's
11 been marked as Exhibit R-20?

12 A Yes I do.

13 Q And what do you recognize that to be?

14 A I did it -- typewrite a summary -- what was happen in the
15 meeting.

16 Q Okay. Did you make this summary in the course of your
17 duties as the director of CSS at Northeast?

18 A Absolutely, yes.

19 Q Okay.

20 MS. LANOUEETTE: Offer Exhibit 20.

21 JUDGE SANDRON: And when -- when did you prepare this
22 document?

23 THE WITNESS: In my office, sir.

24 JUDGE SANDRON: And when? When did you do that?

25 THE WITNESS: It was on November 20, because it was the

1 next morning I recall.

2 MS. LANOUE: So would that be November 12th?

3 THE WITNESS: 20 -- I mean, 12 exactly, because it's 11.

4 Yes, 12. Yes. I'm sorry.

5 JUDGE SANDRON: Any voir dire on the document or
6 objections?

7 MS. TUMINARO: Just a quick question.

8 **VOIR DIRE EXAMINATION**

9 Q BY MS. TUMINARO: Mr. DeAbreu, it seems it's -- these
10 events happened on the 11th. Why did you write November 19th
11 in the document in your statement?

12 A No, the 11/19 means the -- the day and the year.

13 Q I understand. Thank you very much.

14 A That is November 11, '19.

15 Q Okay, good. Thank you.

16 A You're welcome.

17 JUDGE SANDRON: Respondent's Exhibit -- yes.

18 MS. TUMINARO: No objection.

19 JUDGE SANDRON: Respondent's Exhibit 20 is received.

20 **(Respondent Exhibit Number 20 Received into Evidence)**

21 MS. LANOUE: I am finished with direct, Your Honor.

22 JUDGE SANDRON: Cross-examination?

23 MS. PENDER: Yeah. Thank you, Your Honor.

24 **CROSS-EXAMINATION**

25 Q BY MS. PENDER: Good morning, Mr. DeAbreu.

1 A Good morning.

2 Q My name is Alicia Pender. I'm the counsel for the NLRB
3 here. I'm just going to ask you some questions this morning.

4 A Yes.

5 Q Can you look at Respondent Exhibit 44?

6 A 44?

7 Q I can try to screen share it, although I don't --

8 JUDGE SANDRON: It's assignment sheets.

9 MS. PENDER: That's right.

10 JUDGE SANDRON: If you can --

11 MS. PENDER: I'm just trying to scroll back to the
12 beginning.

13 JUDGE SANDRON: Right.

14 MS. PENDER: Okay.

15 MS. LANOUILLE: I can share the first 17 pages if you
16 want.

17 MS. PENDER: I got it. Thank you, though.

18 Q BY MS. PENDER: Okay. Mr. DeAbreu, do you have Respondent
19 44 in front of you?

20 A Yes, I have it.

21 Q And these are the assignment and break sheets combined,
22 right?

23 A That's correct.

24 Q And they're typically filled out by whatever CSS
25 supervisor is working on the shift?

1 A Yes.

2 Q And if there's no CSS supervisor working on the shift, who
3 fills this document out?

4 A The nursing supervisor or --

5 Q Does the -- go ahead.

6 A Or the CSS -- another CSS who has seniority.

7 Q So a -- a -- if a supervisor isn't working on a shift, a
8 CSS employee who's not a supervisor will fill this form out?

9 A Can be, but it's very rare because before anything, they
10 will call me. And I will help them, or I will come to the
11 facility to do the assignments.

12 Q Okay. And if you could, next, look at Respondent Exhibit
13 45. It should be the next one. And I'll share that as well.
14 Let me know when you have that in front of you please.

15 A I do have.

16 Q You have it, okay. And what is this form?

17 A This form is the shift -- the shift report done by the
18 supervisor -- supervise -- to supervisor.

19 Q And if there's no CSS supervisor on a shift, who fills
20 this form out?

21 A Usually, it's like I said. I will be at the building if
22 they don't have a supervisor or someone who has seniority.
23 It's very, very rare. I don't recall the time this was
24 occurred because we had two supervisors in every single shift.

25 JUDGE SANDRON: And what was the name of the other

1 supervise -- the other supervisor on his shift?

2 THE WITNESS: Ms. Josie Cruz.

3 JUDGE SANDRON: And would it be accurate to say that on
4 these forms that we've seen, on these exhibits -- that if Mr.
5 Endy was not the one who signed, in most cases, it would have
6 been her who signed those documents --

7 THE WITNESS: Correct.

8 JUDGE SANDRON: -- as supervisor?

9 THE WITNESS: Correct.

10 MS. TUMINARO: Is -- is R-45 the -- the reports from every
11 day in 2019 or just the dates that Mr. Endy was working?

12 JUDGE SANDRON: Well, actually, I think Ms. Pender is --
13 is still doing --

14 MS. TUMINARO: Oh, sorry.

15 JUDGE SANDRON: -- cross.

16 Q BY MS. PENDER: Mr. DeAbreu, I'm going to show you what
17 has been marked as General Counsel Exhibit 7.

18 A Number 7?

19 Q Yes, you don't have it yet. I'm going to show it to
20 you --

21 A Okay, I'm sorry.

22 Q -- on the screen in a second. Okay. Can you see my
23 screen?

24 A Yes.

25 Q Okay. Do you recognize this document?

- 1 A That's correct.
- 2 Q What is this?
- 3 A It's assignment and break sheet combined.
- 4 Q From October 12th, 2019?
- 5 A That's correct.
- 6 Q And who is Anita Rogers?
- 7 A Anita Rogers is a CSS at the time. She had seniority.
- 8 And she was the one who was promote to a supervisor after Mr.
- 9 Joshua Endy left the building -- left the -- the company.
- 10 Q Okay. And -- and so on the date -- on October 12th, 2019,
- 11 Anita Rogers was not a CSS supervisor, right?
- 12 A Not in the time.
- 13 Q Okay.
- 14 A But she had seniority and she knew the job, performed the
- 15 jobs because she was training for the -- for the -- the period.
- 16 Q Okay. And I'm going to show you page 2. This is the same
- 17 day, also filled out by Anita Rogers?
- 18 A Yes. It's Anita Rogers, yes.
- 19 Q And on this -- on this sheet, which is page 4 of the
- 20 document, it's dated October 15th, 2019. And that's also
- 21 filled out by Anita Rogers?
- 22 A That's correct.
- 23 Q As is this, page 5?
- 24 A Yes.
- 25 Q And --

1 A Anita Rogers.

2 Q -- page 6 -- is 10/31/19 also filled out by Ms. Rogers?

3 A That's correct.

4 Q As is page 7?

5 A Yes.

6 Q And these assignment and break sheets I think you already
7 testified are -- are maintained in -- in the ordinary course of
8 business at Northeast, right?

9 A Yes.

10 Q They're official forms?

11 A Yes.

12 JUDGE SANDRON: And Counsel --

13 MS. PENDER: Your Honor, I offer -- sorry.

14 JUDGE SANDRON: On -- on the last page, is the date clear
15 on that? Let's see. It's a little blurry. Is -- is that the
16 last page, I think, 10?

17 MS. PENDER: Yes. It looks like 10/31/19 to me.

18 JUDGE SANDRON: Well, I think it is. It's just a little
19 bit blurry.

20 MS. PENDER: Yeah.

21 JUDGE SANDRON: But I think we can -- can read it.

22 MS. PENDER: Okay. Your Honor, I offer General Counsel
23 Exhibit 7.

24 MS. LANOUE: Voir dire, Your Honor?

25 JUDGE SANDRON: Yes.

VOIR DIRE EXAMINATION

1
2 Q BY MS. LANOUEETTE: Mr. Marcos -- sorry. Mr. DeAbreu, if
3 you look at pages 1 and 2 -- let's see. There's 1 and there's
4 2. Do those appear to be the exact same document?

5 A Can you show me again please?

6 Q This is page 1.

7 A Yes.

8 Q And this is page 2.

9 A Yes.

10 JUDGE SANDRON: It's -- it's a little hard on screens to
11 compare documents.

12 MS. LANOUEETTE: I agree, Your Honor.

13 JUDGE SANDRON: But let's see.

14 MS. LANOUEETTE: And I believe there was one more date,
15 where there the same date?

16 Q BY MS. LANOUEETTE: There are page 3 and page 4. Do those
17 also appear to be the same document, except that page 3 the
18 break is filled in?

19 A Yeah, probably the same documentation.

20 Q Would there be any reason for a CSS supervisor or someone
21 filling in to fill out two assignment and break sheets for the
22 same day?

23 A No, maybe because they take double copies. The
24 documentation's the same -- the same value.

25 MS. LANOUEETTE: No -- no objection.

1 JUDGE SANDRON: All right. General Counsel Exhibit 7 is
2 received.

3 (General Counsel Exhibit Number 7 Received into Evidence)

4 RESUMED CROSS-EXAMINATION

5 Q BY MS. PENDER: Mr. DeAbreu, where -- do you have an
6 office at Northeast?

7 A Yes, I do.

8 Q Where is your office?

9 A My office is located in the medical suite in the second
10 floor.

11 Q I'm going to show you Respondent Exhibit 48, which is the
12 evaluation of Mr. Endy.

13 MS. LANOUEETTE: Do you want me to screen share the one
14 where that's not cut off?

15 MS. PENDER: Yes, please.

16 MS. LANOUEETTE: Okay. Put it up here. Okay, all right.

17 MS. PENDER: I think I can do it. I think I have it in my
18 email.

19 MS. LANOUEETTE: Sorry. I had just put it up in case
20 anyone -- you know --

21 MS. PENDER: That's okay. I've got it. I got it up.
22 Okay.

23 Q BY MS. PENDER: Mr. DeAbreu, do you have this document in
24 front of you?

25 A Yes, I do.

1 Q Okay. And you testified yesterday that you -- you
2 performed evaluations of Mr. Endy every year; is that right?

3 A That's correct.

4 MS. PENDER: Your Honor, this is the only evaluation of
5 Mr. Endy that was produced pursuant to the subpoena where we
6 requested a complete copy of his personnel file.

7 JUDGE SANDRON: Is there -- would there be any reason why
8 the others would not be in his personnel records, Ms.
9 Lanouette, if you know?

10 MS. LANOUEETTE: I'm not aware of any others.

11 THE WITNESS: I'm not aware.

12 MS. LANOUEETTE: So Mr. DeAbreu, do you understand that
13 they are asking you -- did you do an evaluation for Joshua Endy
14 for dates before this?

15 THE WITNESS: Oh, I can't recall.

16 MS. PENDER: Can't recall, okay.

17 Q BY MS. PENDER: Do you recall ever doing an evaluation of
18 Josh Endy other than the one in front of you?

19 A I don't recall.

20 JUDGE SANDRON: Well, are evaluations required annually?

21 THE WITNESS: Yes. But I have to -- I don't -- I -- I
22 really don't recall.

23 MS. LANOUEETTE: Okay.

24 JUDGE SANDRON: All right.

25 MS. LANOUEETTE: I can clarify that on redirect or try to.

1 MS. PENDER: Okay.

2 JUDGE SANDRON: All right.

3 Q BY MS. PENDER: Mr. DeAbreu, you testified that CSS
4 supervisors dress professionally, right?

5 A That's correct.

6 Q Do they dress differently than CSS employees?

7 A Like I said yesterday, no.

8 Q Could a CSS employee wear a tee shirt to work?

9 A Not usually, but they can.

10 Q Did you ever discipline Joshua Endy for what he wore to
11 work?

12 A Can you repeat, please?

13 JUDGE SANDRON: Do you want -- it's --

14 Q BY MS. PENDER: Did you ever discipline Joshua Endy
15 because of what he was wearing?

16 A Verbally, yes, more than once.

17 Q And why was that?

18 A Because he used to be -- come to work with sweatpants,
19 white tee shirts open in the front. I'm sorry. My words --
20 but looks like he was homeless.

21 Q Did you ever put --

22 JUDGE SANDRON: Did you -- do you remember when you had
23 those verbal --

24 THE WITNESS: No, I don't, Your Honor. I don't. I don't
25 recall times. I don't remember.

1 JUDGE SANDRON: Well, how -- how -- let's see. How long
2 was he under your supervision? About how long was he under
3 your --

4 THE WITNESS: Around a year, a year and a half --

5 JUDGE SANDRON: I see.

6 THE WITNESS: -- is what I can remember.

7 JUDGE SANDRON: Well, okay. So I -- I -- I suppose,
8 depending on how long he was under the supervision, then there
9 might not have been an earlier evaluation that he performed.
10 But we would ordinarily expect there would be evaluations in
11 the record.

12 THE WITNESS: Yeah.

13 Q BY MS. PENDER: Mr. DeAbreu, how long have you been CSS
14 director?

15 A Around 12 years.

16 Q For 12 years. And how long was Mr. Endy a CSS supervisor,
17 if you recall?

18 A Exactly, I don't recall.

19 Q Before he was a CSS -- before he was a CSS supervisor, he
20 was a CSS employee, right?

21 A Yes.

22 Q And you were his director at that point as well, right?

23 A Yes.

24 Q You were the director of CSS when Mr. Endy was hired,
25 right?

1 A Yes.

2 Q Mr. DeAbreu, did Josh Endy have the authority to hire a
3 CSS worker?

4 A No. Usually, we -- I hired the -- the CSS worker because
5 I do the -- with -- I do the -- the interview. And I will
6 inform the -- my supervisors for the shift the interview is
7 done. And he did not because his shift was 11 to 7. And
8 usually, the interviews in the hiring process is done by the --
9 the days -- you know, during the day -- normal hours.

10 Q Did Mr. Endy have the authority to transfer employees from
11 CSS to another department?

12 A No.

13 Q Or from another department to CSS?

14 A No.

15 Q About how many times do you recall Mr. Endy writing up a
16 CSS employee?

17 A I don't recall -- recall many times. I don't think it was
18 a lot, but I don't recall how many.

19 Q Did Mr. Endy have the authority to lay off any CSS
20 employees?

21 A No, we don't -- we never had to lay off employees.

22 Q Did Mr. Endy have the authority to give a promotion to a
23 CSS employee?

24 A No. He --

25 Q Did he have the a -- sorry. Go ahead.

1 A No.

2 Q Did he have the authority to give someone a wage increase?

3 A No, because wages -- we have to speak with our
4 administrator.

5 Q Do you have the authority to give someone a wage increase
6 without speaking to anyone?

7 A No. I -- again, it's not anyone. I have to speak with my
8 administrator. Thank you.

9 Q Did Mr. Endy have the authority to give anyone a bonus?

10 A No.

11 Q Did he have the authority to give anyone a reward?

12 A No.

13 Q Did Mr. Endy complete employee evaluations?

14 A No, but when the evaluation was done, usually I used to
15 be -- you know, call him with -- or Ms. Josie Cruz with the
16 employee who was -- done the evaluation to go over the
17 evaluation.

18 JUDGE SANDRON: That was after it was done?

19 THE WITNESS: After, so we can go over, Your Honor,
20 with -- the evaluation so they -- the staff plus the supervisor
21 knows what was done because you know --

22 Q BY MS. PENDER: Did Mr. Endy --

23 A I --

24 Q Sorry. Go ahead if you weren't finished.

25 A No, thank you.

1 Q Okay. Did Mr. Endy have the authority to approve an
2 employee's vacation request?

3 A No.

4 Q You testified about the November 11th, 2019 meeting with
5 Mr. Endy. Do you remember that?

6 A Yes.

7 Q And you said Keith asked you to schedule that meeting,
8 right?

9 A Keith ask me to schedule the meeting? No, he called me
10 and asked me to bring Mr. Josh in a meeting. And he explained
11 to me what was the meeting for.

12 Q What did he tell you about what the meeting was for?

13 A Mr. Joshua Endy was soliciting Union authorization cards.
14 And as a CSS supervisor, he could not do that.

15 Q Before Keith told you that, did you know that Mr. Endy was
16 soliciting Union cards?

17 A I have no recollection. I don't think so.

18 Q So nobody complained to you about that. No employees
19 complained to you?

20 A I don't recall, no.

21 MS. PENDER: I have nothing further, Your Honor.

22 JUDGE SANDRON: Okay. Ms. Tuminaro?

23 MS. TUMINARO: Yes, just a few questions. But may I ask
24 whether the witness submitted a Jencks statement in connection
25 with the Government's investigation? And if so, I'll call for

1 the production.

2 MS. PENDER: Yes. I will email that to you. It is --
3 there's one six-page document.

4 JUDGE SANDRON: And the date on it?

5 MS. PENDER: It is -- my computer froze. Give me one
6 second please.

7 JUDGE SANDRON: Yes.

8 MS. PENDER: Okay. It is dated -- signed December 17th,
9 2019.

10 JUDGE SANDRON: So we'll -- we'll go off the record for
11 ten minutes and -- and give the attorneys --

12 MS. LANOUEETTE: Thank you, Your Honor.

13 JUDGE SANDRON: -- time to review it. Off the record.
14 (Off the record at 10:42 a.m.)

15 JUDGE SANDRON: Okay, very good. Ms. Tuminaro, cross-
16 examination?

17 MS. TUMINARO: Thank you. Just a few questions, Your
18 Honor.

19 **CROSS-EXAMINATION**

20 Q BY MS. TUMINARO: Mr. DeAbreu, you were talking about the
21 job duties of the CSS employees. How -- how many CSS employees
22 work on a typical shift?

23 A According to our needs, but it's around 12, 13. Not
24 all --

25 Q And are they --

1 A I'm sorry.

2 Q No, thank -- go ahead. I -- I didn't hear -- I didn't
3 want to cut you off.

4 A Overnight it's between seven to ten, eight, nine, ten.

5 Q And are the CSS employees responsible for neighbors only
6 on a particular unit or on several units?

7 A It's where they're assigned for. And we have a particular
8 assignment, which is increased supervision. And they go around
9 the entire building where they can check in the neighbors who
10 they're supposed to.

11 Q And about how many neighbors have been designated as
12 needing increased supervision in the building?

13 A It's according with the needs; it's according with the
14 doctor's order.

15 Q And so how many is that on a typical -- I mean, how many
16 if you were -- if you were a CSS employee assigned to increased
17 supervision, how many neighbors would you be checking on during
18 your shift?

19 A It varies. We have the psych on the first floor. And
20 it's -- both floors are different CSS. Would be on the first
21 floor -- 10, 12, 15. Second -- first -- second floor could be
22 20; could be 17. I can't say exact -- the number of neighbors.
23 It's according to their needs.

24 Q I understand. So that's the increased supervision
25 assignment.

1 A Yes.

2 Q What if you are assigned to the closed unit? How many
3 neighbors does a CSS worker or is a CSS worker responsible for
4 monitoring for or caring for on a closed unit?

5 A It's 20 neighbors.

6 Q For the one CSS assigned to the closed unit?

7 A Between -- two CSS besides nursing staff and besides
8 another department.

9 Q And what if you have a CVO assignment? How many CVO
10 assignments are there on any given shift?

11 A It's -- it's depending -- the doctor's order and the
12 needs. Usually, it can be four; can be five. I can't say
13 exact how many.

14 Q Mr. DeAbreu, you mentioned that at this meeting on
15 November 11th of 2019 there were some other people present in
16 addition to yourself and Keith, correct?

17 A Yes.

18 Q Keith is a consultant, correct?

19 A Yes.

20 Q How many times had you met Keith before that meeting?

21 A I had -- I saw him a few times around the building, but I
22 don't recall how many times.

23 Q Was it -- was it less than five?

24 A No. No, I don't think so. I think it's, like, six,
25 seven. I don't know.

1 Q Okay.

2 A I can't say.

3 Q And the other person who was present -- Mike, I think you
4 said his name was. Do you know who -- who he was? Did he hold
5 a position with the Employer?

6 A No. He -- I can't tell yet. Because -- I don't think
7 so -- he was employed. But I can't say that.

8 Q Had you ever met Mike before that day?

9 A Oh, I saw him in the building, yes.

10 Q How many times?

11 A I don't know.

12 Q Less than five?

13 A No, no, no. I can't -- I can't say. I can't say because
14 I don't recall.

15 Q Okay. And you think the fourth person was Mondo; is that
16 right?

17 A This is what I think was his name, like I said.

18 Q And how many times had you met Mondo before?

19 A I don't recall how many times. But I saw him before, but
20 then, I don't recall how many times.

21 Q Was it about the same about of times that you met Mike?

22 A Could be, but I can't say because I don't recall.

23 Q You -- you testified about Destiney Gray, whose employment
24 you terminated on December 4th of 2020. How long had she
25 worked at Northeast prior to her termination?

1 A A few months.

2 Q Mr. DeAbreu, Josh Endy had a family, correct?

3 A I can't tell you. Personnel issues, I can tell you.

4 Q He was -- you said you don't know anything about his
5 children?

6 A Personal issues -- I don't.

7 MS. TUMINARO: I don't have anything further. Thank you.

8 JUDGE SANDRON: Ms. Joslin, any questions?

9 MS. JOSLIN: I'm good, Your Honor. Thank you.

10 JUDGE SANDRON: Okay. Redirect?

11 MS. LANOUEETTE: Just briefly, Your Honor.

12 **REDIRECT EXAMINATION**

13 Q BY MS. LANOUEETTE: Mr. DeAbreu, prior to Patrick Weir
14 becoming administrator at the facility, were you required to
15 complete evaluations of staff?

16 A Yes.

17 Q Are you sure about that?

18 JUDGE SANDRON: All right. Well, you can't question him
19 about

20 THE WITNESS: Well --

21 JUDGE SANDRON: -- his answer.

22 A I don't -- I don't -- I don't recall if -- after Mr.
23 Patrick Weir was administrator before -- you know, when he --
24 no, after. I can't recall exactly if it was before or -- or
25 after. It's difficult to recall times.

1 Q BY MS. LANOUEETTE: That's fine. You testified the NBI --
2 there would be two CSS supervisors or two CSS employees?

3 A Yes.

4 Q If there was also a close visual observation, a CVO, on
5 NBI, would that be different?

6 A We had to have somebody else.

7 Q Okay.

8 MS. LANOUEETTE: That's all the questions I have.

9 JUDGE SANDRON: Any -- any follow-up questions?

10 MS. PENDER: No, thank you, Your Honor.

11 JUDGE SANDRON: Thank you, Mr. DeAbreu -- Abreu --
12 Abreu -- DeAbreu.

13 THE WITNESS: Mr. DeAbreu. I understand. Thank you.

14 JUDGE SANDRON: Thank you for your testimony.

15 THE WITNESS: Thank you very much, appreciate it.

16 JUDGE SANDRON: You're done. Thank you for testifying.
17 All right.

18 MS. LANOUEETTE: We have our next witness. We're just
19 switching visitors.

20 JUDGE SANDRON: How many more witnesses do you have
21 altogether?

22 MS. LANOUEETTE: I have the witness I'm going to call. I
23 have one, two, three more --

24 JUDGE SANDRON: You're expect -- you're expecting --

25 MS. LANOUEETTE: -- not counting this one, so four total.

1 JUDGE SANDRON: And how long -- how lengthy do you expect
2 their -- their testimony to be, just so we get an idea of
3 whether we'll finish today or not?

4 MS. LANOUEETTE: I think it's unlikely we'll finish today.

5 JUDGE SANDRON: All right. And then we'll probably --

6 MS. LANOUEETTE: I will do my best to try to make that
7 happen.

8 JUDGE SANDRON: All right. Well, if -- and I don't know
9 if the General Counsel will have any rebuttals or Ms. Joslin or
10 Ms. Tuminaro. So let's see as we go. But again, we're
11 scheduled for the week, so if we need to finish tomorrow
12 morning, we will. Okay.

13 Do you want -- can -- can the mask be removed? Oh, there.

14 All right. Madam, I'm the -- I'm the judge here. I'm
15 Judge Sandron. And I'm going to swear you in. So if you'll --

16 MS. CARCHIDI: Okay.

17 JUDGE SANDRON: -- raise your right hand.

18 Whereupon,

19 **CAROLYN CARCHIDI**

20 having been duly sworn, was called as a witness herein and was
21 examined and testified as follows:

22 JUDGE SANDRON: And you -- you can lower your hand. If --
23 if you can please state and spell your full and correct legal
24 name for the record and provide us with an address, either
25 residence or work.

1 THE WITNESS: Okay. It's Carolyn, C-A-R-O-L-Y-N.

2 Carchidi, C-A-R-C-H-I-D-I.

3 JUDGE SANDRON: Thank you. And -- and an address?

4 THE WITNESS: 300 Grant Avenue. That's my Employer --
5 Lake Katrine, New York, 12449.

6 JUDGE SANDRON: Thank you.

7 **DIRECT EXAMINATION**

8 Q BY MS. LANOUEETTE: Ms. Carchidi, what is your -- who is
9 your current employer?

10 A Northeast Center.

11 Q And what is your current position?

12 A I'm the director of nursing.

13 Q How long have you been the director of nursing?

14 A Since October 31st, 2019.

15 Q What was your position there before you were the director
16 of nursing?

17 A The assistant director of nursing.

18 Q How long were you the assistant director of nursing at
19 Northeast?

20 A From May 2019 until October.

21 Q And before you were the assistant director of nursing,
22 what role did you hold?

23 A I was a full-time night supervisor.

24 Q Okay. How long were you the night supervisor?

25 A November 2017 until I became ADON.

1 Q Okay. And did you hold any positions at Northeast prior
2 to being night supervisor?

3 A No. Well, a long time ago when I was an LPN.

4 JUDGE SANDRON: So -- so you -- you left, and then came
5 back?

6 THE WITNESS: About 20 years later, yeah.

7 JUDGE SANDRON: Oh.

8 Q BY MS. LANOUILLE: What is your role as director of
9 nursing?

10 A I kind of oversee the nursing department. I'm also
11 infection control -- the infection preventionist at this point
12 in time also.

13 Q And -- and what was your role when you were the assistant
14 director of nursing?

15 A I did -- I was, like -- I assisted the director of nursing
16 doing room rounds. I would do a lot of other things that
17 needed to be done. If there was a supervisor that was out, I
18 would cover supervision shifts. I also filled in as a
19 phlebotomist for about five -- four, five months. So I kind of
20 did a little bit of everything.

21 Q Okay. Why did you become the interim director of nursing
22 in October -- on October 31st, 2019?

23 A The prior director of nursing was terminated.

24 Q And in your role as the assistant director of nursing,
25 were you aware of -- of the issues that caused the termination

1 with the director of nursing?

2 A To some degree.

3 Q Okay. What were you aware of?

4 A I know that there were some possible discipline issues
5 that may or may not have been -- that were not addressed by
6 her.

7 Q Do you know why they were not addressed?

8 JUDGE SANDRON: Well, I -- I think we're -- she really
9 doesn't have firsthand knowledge of management's decisions.

10 Did -- were you personally involved in the decision to
11 terminate her?

12 THE WITNESS: I was not.

13 JUDGE SANDRON: Well, I -- I don't think she really would
14 be -- hearsay as to her -- as to what happened.

15 Q BY MS. LANOUE: After -- after the director of nursing
16 left, what did you discover?

17 A I discovered that there were disciplines that were
18 never -- disciplines that had been written but never followed
19 through on.

20 Q Okay. And how did you discover that?

21 A I was given forms by people who had given them to the
22 prior director of nursing.

23 Q What are the positions in the nursing department?

24 A There is my position, the director of nursing. Then there
25 is assistant director of nursing. There's unit managers.

1 There's nursing supervisors, unit nurses, LPNs and RNs, CNAs.
2 We also have TNAs and unit assistants.

3 JUDGE SANDRON: What's -- what's a TNA?

4 THE WITNESS: It's a temporary nursing assistant that --
5 they can almost function as a CNA, but they haven't sat and
6 done their certification yet.

7 JUDGE SANDRON: Oh, I see.

8 Q BY MS. LANOUE: And what is a unit assistant?

9 A They do not provide any hands-on direct care. They can
10 pass out trays after the nurse has approved the tray. They
11 make beds, change out linen bags, can give water to anybody who
12 can drink it on their own.

13 Q What do CNAs do?

14 A CNAs are more direct hands-on care. They can change
15 people, bathe people. They perform grooming, nail care,
16 shaving, incontinence care.

17 Q And what is the role of the LPNs on the -- or on the unit?

18 A The LPNs can do medications, treatments. They can collect
19 data, but they cannot assess. They will also do hands-on care
20 when -- when they need to, answer call lights.

21 Q And what is the role of RNs?

22 A The RNs will oversee the -- the -- the LPNs, but they also
23 will do hands-on care, medications, treatments, IVs. Only the
24 RNs can do anything that has to do with the central line for IV
25 access, where the LPNs can do peripheral lines.

1 Q Can RNs also do assessments of patients?

2 A They do the assessments, yes.

3 Q And what is the role of unit manager?

4 A The unit manager oversees all the staff on his or her
5 unit. They can do hiring; they can do disciplines. They can
6 suspend. They will -- they do paperwork as far as making sure
7 that charting is completed, care plans are completed. They
8 also make sure that the CNAs and the nurses are signing for
9 everything that needs to be signed for during the course of
10 their shift.

11 Q What is your role in discipline that is performed by unit
12 managers?

13 A My role is very little. I -- they are -- they can do
14 disciplines independent of me.

15 Q Was that the case --

16 A They can, yeah.

17 Q Sorry. Was that the case prior to November 18th of 2019?

18 A No.

19 Q What was the -- what was different before November?

20 A Kathy was usually involved in all decisions.

21 Q So what was the process when Ms. McCormick was director of
22 nursing?

23 A She -- they would -- they would come to her and talk --
24 and discuss things with her.

25 Q And how would discipline then be issued?

1 A If she wanted it to be.

2 Q After you became director on October 30th of 2019, how did
3 you communicate the change in practice?

4 A We held -- I had a meeting with everybody.

5 Q When you say everybody, who was at that meeting?

6 A All the dep -- all the unit managers and the -- the one
7 aide, because I only had one aide on at that time. So it was
8 the unit managers and the aide on.

9 Q And do you remember approximately when that meeting was
10 held?

11 A It was pretty early because I wanted everybody to know. I
12 didn't want to hold back and surprise them. So it was -- it
13 was pretty early, probably within the first two to, maybe,
14 three weeks.

15 Q And who -- I'm sorry. Was Ms. Golden present at that
16 meeting?

17 A Yes.

18 Q What did you tell the unit managers with regard to
19 discipline?

20 A They were responsible for their units.

21 Q What else did you tell them in that meeting with regard to
22 their responsibility for their units?

23 A That I expected them to know what was going on on their
24 units, that they were responsible or I mean, the -- the people
25 themselves are also responsible. But they are responsible for

1 what their staff is doing or -- and/or not doing.

2 Q Following that meeting, did anyone come to you with any
3 questions about what you meant?

4 A No.

5 Q Okay.

6 JUDGE SANDRON: So we -- so we get the context, about
7 how -- how many total employees are in the nursing department
8 altogether?

9 THE WITNESS: There would have been eight unit managers,
10 and then, the assistant director of nursing.

11 MS. LANOUEITE: At the meeting.

12 JUDGE SANDRON: And --

13 MS. LANOUEITE: I think he asked you: How many total in
14 the nursing department?

15 THE WITNESS: Oh, I'm sorry.

16 JUDGE SANDRON: Well, that was still a -- that was
17 still -- that was good to have that. But now, the total
18 altogether?

19 THE WITNESS: We're -- we're about one -- we go anywhere
20 between 175 and about 200.

21 JUDGE SANDRON: I see. Thank you.

22 Q BY MS. LANOUEITE: Who is responsible for performance
23 appraisals?

24 A All the unit managers are responsible for -- are
25 responsible for theirs.

1 Q Okay. And I want to show you what's been marked as
2 Respondent's Exhibit 28 and ask if you recognize the documents
3 contained therein. You'll have to look in the notebook. I
4 can't put it on the screen.

5 A Oh, I'm sorry. What is it?

6 JUDGE SANDRON: Maybe --

7 MS. HAMMONDS: I'm sorry. I'm trying to find it on my --
8 one second.

9 JUDGE SANDRON: Okay, sure. I think it'd be helpful to
10 have it on the screen so we can see it.

11 MS. HAMMONDS: Which exhibit number was it again?

12 MS. LANOUEETTE: 28 please.

13 MS. HAMMONDS: Okay, thank you. Yep.

14 Q BY MS. LANOUEETTE: She --

15 A That's a performance --

16 Q Sorry.

17 A That's a performance evaluation.

18 Q And who has signed that first performance evaluation?

19 A Kay is one of the nurses that was on that unit, and
20 Cynthia is the unit manager.

21 Q Prior to you taking over as director of nursing, did unit
22 managers do their evaluations for the unit?

23 A Yes.

24 Q Okay. Are the documents contained in Exhibit 28 true and
25 accurate copies of the evaluations you were able to obtain for

1 the year 2019?

2 A Yes.

3 Q Are these documents kept in the ordinary court -- course
4 of business at Northeast Center?

5 A Yes.

6 Q The ordinary course of business to make and keep such
7 documents? Ms. Carchidi, is it -- is it the ordinary course of
8 business to keep such documents at Northeast?

9 A Yes.

10 Q Okay.

11 A Yes.

12 MS. LANOUE: Offer Exhibit R-28.

13 JUDGE SANDRON: So are these the only documents that you
14 could located in terms of evaluations of nursing employees
15 during that period? Or -- or -- or is there -- well, maybe we
16 should just go back. Are nursing employees evaluated yearly?

17 THE WITNESS: Yes, they are supposed to be.

18 JUDGE SANDRON: So these documents that are part of
19 Respondent's Exhibit 28 -- they -- they represent the only ones
20 that you could locate or could be located? Or -- or are these
21 just the portions? Because if there -- there's what -- a
22 lot -- many employees in the department; these are only a few.
23 So are there other evaluations that are not included here?

24 THE WITNESS: Anything -- I can't speak to anything before
25 October 2019 because that -- I wouldn't have been part of that.

1 JUDGE SANDRON: So these are after you became the director
2 of nursing?

3 MS. LANOUEETTE: I don't think they all -- are all after
4 she became director, but I --

5 JUDGE SANDRON: Let me --

6 Q BY MS. LANOUEETTE: Ms. Carchidi?

7 A Yes.

8 Q Prior to you becoming director, do you know whether the
9 prior director of nursing enforced the rule requiring
10 evaluations annually?

11 A I don't believe she did, no.

12 JUDGE SANDRON: Okay. Any other voir dire on the
13 document?

14 **VOIR DIRE EXAMINATION**

15 Q BY MS. PENDER: If you -- if you know, Ms. Carchidi, are
16 these the only evaluations that were performed in 2019?

17 A I do not know.

18 Q Can it -- can you -- if you know, can you tell me why the
19 first two are two pages of -- of evaluation and the rest of
20 them are only one page?

21 A Nurses have different evaluations than the CNAs will have.

22 Q Thank you.

23 MS. PENDER: No objection, Your Honor.

24 JUDGE SANDRON: Hearing no objection, Respondent's Exhibit
25 28 is received.

1 (Respondent Exhibit Number 28 Received into Evidence)

2 RESUMED DIRECT EXAMINATION

3 Q BY MS. LANOUEETTE: Ms. Carchidi, can unit managers suspend
4 employees?

5 A Yes, they can.

6 Q And in what circumstances would that occur?

7 A It can occur if there is insubordination, refusal to
8 perform their job, if there's any suspicion of abuse, neglect.
9 If there's arguing between them and another staff member, a
10 manager can suspend both.

11 Q Okay. How is the authority to suspend employees
12 communicated to the unit managers?

13 A I told them.

14 Q When did you do that?

15 A Each new person that's hired gets told. But I had done
16 that, again, during that first meeting that I had with
17 everybody within the first two to three weeks.

18 Q Do unit managers attend the management meetings?

19 A We -- yes, we have a management meeting.

20 Q Okay. And I'll show you what's been marked as
21 Respondent's Exhibit 50 and ask: do -- ask if you recognize
22 it.

23 A That's the Falls committee.

24 Q Okay. Who attends Falls committees?

25 A All the unit managers do, the ADONs, and myself.

1 Q Okay. And is this sign-in kept in the ordinary course of
2 your business at Northeast?

3 A Yes. I keep them, yes.

4 Q Okay. Why do you keep the -- the sign-ins for the Falls
5 Meetings?

6 A I need to keep record of, number one, that we had the
7 meeting, and number two, that we discussed the individuals
8 at -- that are on our list, the -- the patients that are on our
9 list that have had falls.

10 Q Okay.

11 A And this was a Behavior committee one.

12 Q Okay. And if we -- oh, that one's a Behavior?

13 A Yeah. That's different.

14 Q Who attends Behavior committee meetings?

15 A Behavior committee is our psychiatrist, our -- the nurse
16 from NBI, any unit that is currently having people that are
17 having behaviors, at least one of the ADONs, and myself. And
18 I'm sorry. Also, the head of CSS, and sometimes, one of the
19 CSS supervisors attend.

20 Q Okay. Are the sign-in sheets for the Behavior committees
21 kept in the ordinary course of business?

22 A Yes, they are.

23 Q And is it the ordinary course of business for you to make
24 and keep the sign-in sheets?

25 A Yes.

1 Q Okay. Why do you keep the Behavior committee sign-in
2 sheets?

3 A Again, we have to have a record that these behaviors were
4 discussed as a committee and if we came up with any ideas to
5 try to mitigate those behaviors.

6 Q Okay. And when she was unit manager, did Ms. Golden
7 attend both Falls committee and Behavior committee meetings?

8 A She should have, yes.

9 MS. LANOUE: Offer Respondent's Exhibit 50.

10 JUDGE SANDRON: So all -- so all of the people who signed
11 these forms as being present -- they -- they were unit managers
12 or above?

13 THE WITNESS: Yes. You -- the one that's currently on the
14 screen says Lucas (phonetic) attended. Lucas is one of the
15 physical therapists. So this was a Falls committee. And we
16 were going to discuss somebody very particular on this one, so
17 he attended this meeting.

18 JUDGE SANDRON: I see.

19 THE WITNESS: Yep.

20 JUDGE SANDRON: But in -- but in the nursing department,
21 it was only the unit managers and above?

22 THE WITNESS: Yes.

23 JUDGE SANDRON: Any voir dire? Any objections?

24 MS. PENDER: No objection.

25 MS. JOSLIN: I have voir dire, Your Honor.

1 JUDGE SANDRON: Go ahead.

2 VOIR DIRE EXAMINATION

3 Q BY MS. JOSLIN: Ms. Carchidi, do you know why there --
4 there are only forms pertaining to the months of May, July, and
5 October in this packet?

6 A I took -- I was in the position in October. So anything
7 that happened before me, I can't -- I can't give any -- that
8 was one initialed there by Kathy. So that was the meeting she
9 was at. And I can't give you any information as to whether or
10 not she kept them.

11 Q Well, this -- do you know if these records that make --
12 that comprise of Exhibit 50 -- were these all in your file in
13 your office, maintained by you?

14 A Only the ones from the end of October.

15 Q Well, can you find ones that -- because I don't -- oh, I
16 see one from October 25th -- 7 of 8, page 7 of 8. Is that one?
17 There we go.

18 A No, that's October 25th. That was -- Kathy was still the
19 director of nursing at that time.

20 Q Okay. So I don't -- and maybe I'm wrong, but I don't see
21 any that pertain to the period of time that you held the
22 position. So I'm just trying to figure out where these
23 documents were kept. Who was responsible for maintaining them?
24 That kind of thing -- can you help us with that?

25 A I keep as -- since I became the director of nursing, I

1 keep them in a book in my office. I have behaviors in one part
2 of the book, and I have Falls committee in the other part of
3 the book.

4 Q But none of these --

5 A And the --

6 Q -- were kept in your books, right? Because they weren't
7 pertaining to the period of time that you were the director of
8 nursing.

9 A Correct, so I don't know. I don't know. I don't know
10 where they were kept.

11 Q Okay.

12 A I mean, I signed some of them.

13 Q Okay.

14 A I was here; I attended when I was ADON.

15 Q Do you know if -- does this -- this exhibit comprises of
16 all the Falls -- who is the Falls committee and Behavioral
17 committees reports for -- or meetings for that period of time,
18 May through October of 2019?

19 A The committees are held every week. Falls committee and
20 Behavior committee are held every Friday.

21 Q Okay.

22 MS. JOSLIN: Your Honor, I object because I think this is
23 wholly incomplete. I don't know that she's the right
24 individual to lay the foundation for the exhibit. And it's
25 in -- we don't have any basis for why these particular

1 committees' meeting records were selected.

2 JUDGE SANDRON: Well, were these the only documents that
3 you could find on these meetings in -- in the records that you
4 have as the director of nursing? You say you have access to
5 earlier records. What -- are these the only ones that you
6 could locate for that period? You --

7 MS. LANOUE: I mean, the behaviors -- I went through
8 it.

9 JUDGE SANDRON: Do you understand my question?

10 THE WITNESS: Are you speaking to me?

11 JUDGE SANDRON: Yes.

12 THE WITNESS: I'm sorry. I -- I have all of my records
13 from October, from the end -- for -- it would have been the
14 first Friday after October 31st.

15 JUDGE SANDRON: So these --

16 THE WITNESS: My records go back that far.

17 JUDGE SANDRON: Now -- now, these records that you
18 furnished that were before you became the director of
19 nursing -- were these -- did you locate these in -- in the
20 records in the nursing office?

21 THE WITNESS: These would have been ones that were in the
22 office when I moved in.

23 JUDGE SANDRON: And -- and these are the only ones for
24 that period that you could locate from May to October that --
25 that you found for 2019?

1 THE WITNESS: That would be everything I -- I would have
2 had, yes.

3 JUDGE SANDRON: Well, the -- there are no others that
4 you're aware of for that period?

5 THE WITNESS: No.

6 JUDGE SANDRON: Ms. Pender, do you have a position?

7 MS. PENDER: Well, I'll join in Ms. Joslin's objection.

8 JUDGE SANDRON: Well, to the extent that it may be the
9 only documents in existence, I'll overrule the objections.
10 It -- it -- it is obviously not complete, but whatever was in
11 the office was in the office. And there's no reason to believe
12 that the documents would be inconsistent. But in any event,
13 we'll -- we'll accept it for what it's worth. So the
14 document's received.

15 **(Respondent Exhibit Number 50 Received into Evidence)**

16 THE COURT REPORTER: Judge, could you lift your mic up a
17 little bit? Thank you.

18 JUDGE SANDRON: How's that?

19 THE COURT REPORTER: Better, thank you.

20 **RESUMED DIRECT EXAMINATION**

21 Q BY MS. LANOUEETTE: Ms. Carchidi, you indicated that you
22 have been a nursing supervisor in the past; is that right?

23 A Yes.

24 Q What is the role of the nursing supervisor on dayshift?

25 A During the day, the nursing supervisor will receive

1 medications from the pharmacy when they come in. They deliver
2 the lab specimens to the courier when they come in. They go to
3 all the codes. And a lot of times, they will help the staffing
4 coordinator to try to get staff in the building if we need it.
5 They take call out.

6 Q Okay. Do you know Tara Golden?

7 A I do.

8 Q How do you know her?

9 A She was one of the unit managers.

10 Q After Ms. Golden became the unit manager on NBI, did you
11 have occasion to speak to her about the role?

12 A I -- I did, yes.

13 Q Was that one conversation or more than once?

14 A More than once.

15 Q What is the first conversation you recall having with her?

16 A She was -- she had left Kathy's -- Ms. Kathy McCormick's
17 office, and she was upset, and she was --

18 Q Let me stop you there.

19 A I'm sorry?

20 Q Approx -- I'm going to stop you there. Approximately
21 when, date-wise, was this conversation?

22 A Probably anywhere between August and October. I don't --

23 Q Okay.

24 JUDGE SANDRON: Of -- of 2019?

25 THE WITNESS: Yes, I'm sorry. It was 2019.

1 Q BY MS. LANOUE: And now, what time of day was this?

2 A I believe it was, like, mid-aft -- mid -- midday.

3 Q And where did this conversation take place?

4 A In my office when I was the ADON.

5 Q Okay. And who else was present?

6 A It was just her and I.

7 Q Okay. And what happened during the conversation?

8 A She was upset. She had spoken to Kathy and was upset.

9 And she came into my office and she was very upset.

10 Q Why was she upset?

11 A She felt like her visions of what the unit could be
12 weren't quite living up to her expectations.

13 Q And -- and what did you tell her?

14 A I did explain to her that she was going to -- that she
15 wasn't going to be able to change our patient population, but
16 that the environment around them could be -- she wouldn't --
17 she would change that.

18 JUDGE SANDRON: Did -- did she give you any specifics of
19 what she wanted to do, if you recall?

20 THE WITNESS: She -- she wanted to change a lot of
21 different things all -- all at one time. She wanted to
22 change -- it seemed like, globally, she wanted to change, you
23 know, how CSS did things, and how nursing did things, and how
24 they were able to do or not do things. I mean, meaning the
25 patients -- how they were able to do things or not do them.

1 Q BY MS. LANOUEETTE: Do you remember anything specific about
2 what she wanted to change about nursing?

3 A She -- not -- no, not specifically, I don't. It wasn't a
4 single item.

5 Q How did the conversation end?

6 A I explained to her, you know, like I said, that she could
7 make the -- the general environment better, but she wasn't
8 going to cure what was -- what was wrong. We also discussed
9 just, you know, management styles, how to deal with people, how
10 to talk to people.

11 Q When was -- when she left the office, what was her
12 demeanor?

13 A She seemed okay. She was calmer.

14 Q When was the next time you had occasion to speak with her
15 about her role as unit manager?

16 JUDGE SANDRON: Do you want to pull down the document? I
17 don't think we need it anymore. Thank you.

18 A Probably a month, maybe a month and a half later.

19 Q BY MS. LANOUEETTE: All right. And what did you -- where
20 did that meeting take place?

21 A That might have been down in the supervisor's office.

22 Q Okay. And what time of day?

23 A That would have probably been late -- later in the
24 afternoon, 2 or 3:00 somewhere.

25 Q Were you assistant director of nursing or director of

1 nursing at the time of this conversation?

2 A Assistant director of nursing.

3 Q Okay. So it was before October 31st?

4 A Yes.

5 Q Okay. What -- what -- how did that conversation come
6 about?

7 JUDGE SANDRON: I guess what -- it was just -- it was
8 just --

9 Q BY MS. LANOUE: Who else was present?

10 A Again, it was just her and I.

11 Q Okay. And how did that conversation come about?

12 A She just seemed a little bit upset about something. So
13 I -- I asked what was going on.

14 Q And it was?

15 A I'm sorry?

16 Q What did she tell you?

17 A Again, she was -- about the unit, about staff, and about
18 just in general how she was feeling about things and -- and you
19 know, finding -- finding your style and you know, how to be a
20 manager and that.

21 Q What do you mean by "finding your style"?

22 A It -- it's very difficult to be one of the group, and
23 then, all of a sudden be one of the managers or one of the
24 charge nurses. Or it -- it can be a -- a difficult transition
25 because you are expected to behave differently. There's more

1 expectations of the way you're going to handle yourself,
2 hand -- handle issues.

3 Q What did you say to her during this meeting?

4 A That I understood that it was difficult and that more was
5 going to be expected of you because you are a manager now.
6 You're not just -- you're not one of the floor nurses anymore.

7 Q Did anything else happen at that meeting?

8 A No.

9 Q Okay. How -- how did that meeting end?

10 A The -- it -- we just -- you know, it just ended like
11 normal conversation ends.

12 Q Okay. Did you have any other occasions to discuss her
13 role as unit manager with her?

14 A Yes.

15 Q And when did that occur?

16 A That would have been probably after Kathy was gone.

17 Q Okay. So you were director of nursing, so after October
18 31st?

19 A Yes.

20 Q And who else was present at this meeting?

21 A Mary Pat.

22 Q Mary Pat Carhart?

23 A Yes.

24 Q And for you, who is Mary Pat?

25 A She's my boss.

1 Q Okay.

2 A She's the regional.

3 JUDGE SANDRON: About how long after you -- you became the
4 director did you have this meeting?

5 THE WITNESS: It wasn't -- two, three weeks maybe.

6 Q BY MS. LANOUE: And this meeting -- what time of day
7 was this meeting?

8 A I believe it was afternoon.

9 Q And where did it occur?

10 A In the administrator's office, Mr. Weir's office.

11 Q How did this meeting come about?

12 A We were at another meeting and she seemed upset. And Mary
13 Pat thought it would be a good idea for us to pull her aside
14 and just talk to her and see what was going on.

15 Q Okay. And -- and what happened during this meeting?

16 A We all sat down and closed the door. And she vented. And
17 we let her vent; she had a lot to say. And we let her say --
18 we let her talk.

19 Q Okay. And what happened at the end of -- after she had
20 vented?

21 A Mary Pat talked to her a little bit.

22 JUDGE SANDRON: Can -- can you be more specific of --
23 about what she vented and --

24 THE WITNESS: Again, it was -- again, it was about the
25 unit, the staff, the -- how -- you know, how am I going to make

1 all of these -- all of this come true? And you know, the
2 adjustment to it and you know, how hard it was to be -- you
3 know, I still want to be friends with all of my friends, but
4 now, I'm expected to do this. And --

5 JUDGE SANDRON: Well -- well, how did this -- you -- you
6 said you wanted to take her aside after what had happened at an
7 earlier meeting. Can you tell us what that meeting was about,
8 why you felt you needed to talk to her after that meeting?

9 THE WITNESS: She -- she was upset. She was visibly
10 upset.

11 JUDGE SANDRON: About what though?

12 THE WITNESS: What we came in the office and she talked
13 about -- that, you know, she wanted to still be friends with
14 her friends, but the -- the whole expectation of, you know, you
15 are a manager, and you need to behave like a manager, and then,
16 the unit and you know, things weren't going right on the unit
17 in her -- in her eyes, things weren't going right on the unit.

18 We had a few extreme behaviors at that time, so it was --
19 it was a difficult time on that unit itself. And everybody was
20 kind of feeling the stress of that.

21 Q BY MS. LANOUE: Did -- did you know whether she was
22 upset about something in the meeting or she had come into the
23 meeting upset?

24 A I believe she came into the meeting upset.

25 MS. JOSLIN: Objection. Your Honor, there's no basis for

1 her having any knowledge of that.

2 JUDGE SANDRON: Sustained. The answer will be
3 disregarded.

4 Q BY MS. LANOUEETTE: What do you recall Mary Pat telling
5 her?

6 A She told her quite a few things about presenting yourself
7 as a manager.

8 MS. PENDER: I'm going to object to this, Your Honor.
9 It's hearsay.

10 JUDGE SANDRON: She was present, so if she heard it she
11 could testify about it.

12 MS. JOSLIN: Your Honor, I'm just going to join in that
13 objection to hearsay because Mary Pat, presumably, is on the
14 same side of the coin as this witness, so I don't see how
15 there's a way to get around hearsay.

16 JUDGE SANDRON: What do you mean she's on the same --

17 MS. JOSLIN: Well, she's not -- they're both admitted
18 supervisors in the -- in the complaint, or agents in the
19 complaint.

20 JUDGE SANDRON: Well, I'll -- I'll allow it. As -- as I
21 said earlier, hearsay is not automatically excluded. It's --
22 it's -- in terms of probative value, it's weighed with the
23 totality of the evidence.

24 Go ahead.

25 THE WITNESS: Okay.

1 A She was talking to her about, you know, how to be a
2 manager, how to conduct yourself as a manager. I remember -- I
3 mean, I listened to her because I was new to my role also, so I
4 remember her very clearly saying, you know, you need to learn
5 how to use your pause button. I thought that was kind of a
6 very cute statement to say. You just stop talking. You
7 listen. You take it in before you start talking again. Listen
8 to what somebody has to say to you before you immediately
9 respond to it.

10 Q BY MS. LANOUE: During this meeting, did Mary Pat
11 Carhart ask Tara Golden if she was passing Union cards?

12 A No.

13 Q Do you recall any other converse -- how did this meeting
14 end?

15 A We -- she left; she walked -- you know, the -- the
16 conversation, the meeting, ended and she left.

17 Q Did you have any other occasions to talk to Ms. Golden
18 about her role as a unit manager?

19 A Not really, no.

20 Q Okay. You mentioned attendance at meetings. Did there
21 come a time that you attended management meetings related to
22 the Union organizing campaign?

23 A Yes.

24 Q Okay. And did you raise any concerns with the
25 administrator regarding Ms. Golden at these meetings?

1 A Yes.

2 Q When was the meeting that the concern arose at was, to the
3 best of your rec -- recollection?

4 A Probably was in October, beginning of October.

5 Q Okay. And what (audio interference) day?

6 A I'm sorry?

7 Q What time of day?

8 A Morning.

9 Q Who was present?

10 A Department heads, unit managers.

11 JUDGE SANDRON: Was -- was Ms. Golden there?

12 THE WITNESS: Yes.

13 Q BY MS. LANOUEETTE: And what did you observe that gave you
14 concern?

15 JUDGE SANDRON: Well -- well -- well, actually, what
16 she -- what she said at the meeting because -- because they
17 were at a meeting.

18 MS. LANOUEETTE: Yeah.

19 JUDGE SANDRON: So --

20 Q BY MS. LANOUEETTE: What did Ms. Golden say that gave you
21 concern?

22 A She had come in and she was saying that this person was
23 for the Union; this person wasn't Union. This person might be
24 Union.

25 Q And did anyone respond to this?

1 A Yes.

2 Q Who?

3 A One of --

4 JUDGE SANDRON: Sorry. Just one thing for clarification:
5 Had she said that to you before? Or is this what happened --
6 what she said at this meeting?

7 THE WITNESS: This happened at this meeting.

8 Q BY MS. LANOUEETTE: Who responded?

9 A One of the corporate consultants.

10 Q Do you know their name?

11 A It was Keith. I believe his name was Keith.

12 Q And what did Keith say?

13 A He told her, you cannot do that. You cannot talk to staff
14 about Union dealings, activities, or anything like that. You
15 can't -- you cannot ask them questions.

16 Q Was the concern her reporting or was the con -- to your
17 know -- was -- was the issue he raised reporting or asking
18 questions?

19 JUDGE SANDRON: Well, I don't think she can answer for
20 him.

21 MS. LANOUEETTE: Okay, fair enough. Agreed, fine.

22 Q BY MS. LANOUEETTE: Did there come a time at another
23 management meeting related to the Union activity in the
24 building that you had an additional concern regarding Ms.
25 Golden?

- 1 A Yes.
- 2 Q Approximately when was that?
- 3 A That was, I believe, after October. It was after October.
- 4 Q Were you director of nursing at the time of the second
- 5 incident?
- 6 A I was.
- 7 Q Okay. And where was this meeting held?
- 8 A This was in the administrative conference room.
- 9 Q What time of day?
- 10 A This was morning.
- 11 Q And who was present?
- 12 A The department heads, unit -- and yeah. All the
- 13 department heads were there.
- 14 Q And unit managers?
- 15 A Yep, yes. Unit managers too.
- 16 Q And what did Ms. Golden say at this meeting that gave you
- 17 concern?
- 18 A She came in with a piece of paper. And she started
- 19 talking about -- you know, I talked to people. This is the --
- 20 these are the reasons why they are talking about getting a
- 21 unit -- union in here. Pay, benefits -- there were a couple of
- 22 other things.
- 23 Q And was there any response to this?
- 24 A Yes, there was.
- 25 Q Who responded?

- 1 A One of the corporate consultants did.
- 2 Q And do you know his name -- his or her name?
- 3 A That would have been I -- Mike.
- 4 Q Okay. What did Mike say?
- 5 A Mike was a little bit angrier. And he kind of put his
- 6 hands on the desk and said, you cannot do this. You cannot try
- 7 to talk to people about this. You can't.
- 8 Q What did you do? Was Patrick Weir present during this
- 9 meeting?
- 10 A He was not.
- 11 Q Okay. And what did you do following this meeting?
- 12 A I did come in and talk to him.
- 13 Q Okay. And by him, you mean Mr. Weir?
- 14 A Mr. Weir, yes.
- 15 Q Okay. You -- you -- were you involved in the decision to
- 16 terminate Ms. Golden?
- 17 A No.
- 18 Q Okay. I'm going to draw your attention, now, to Cathy
- 19 Todd. Do you know Cathy Todd?
- 20 A I do.
- 21 Q How do you know her?
- 22 A She was one of the LPNs.
- 23 Q Okay. In November of 2019, did you become involved in an
- 24 investigation regarding Ms. Todd?
- 25 A I did.

1 Q And how did your involvement come about?

2 A I received a complaint from a staff member who wrote a
3 statement.

4 Q And what did you do with that complaint?

5 A I came and I talked to Patrick.

6 Q What -- after discussing the complaint with Mr. Weir,
7 what -- what did you do next?

8 A I went and started an investigation.

9 Q Okay. And -- and what was the first step in that
10 investigation?

11 A To talk to a couple of the residents.

12 Q Who conducted those initial interviews?

13 A Myself and Julie Cole.

14 Q What did you learn from those initial interviews?

15 A That we needed to investigate further.

16 Q What complaints were raised?

17 A We had issues surrounding food. We had issues surrounding
18 general treatment.

19 Q Okay. And what did you do as a result of those initial
20 interviews?

21 A Suspended her pending further investigation.

22 Q How did you notify her of the suspension?

23 A We called her.

24 Q And before suspending her what, if anything, did you say
25 to her?

1 A We --

2 JUDGE SANDRON: Wait. Who is we?

3 MS. LANOUEETTE: Oh, I'm sorry.

4 Q BY MS. LANOUEETTE: Who was present during this phone call?

5 A Patrick and myself.

6 Q Who spoke during the phone call?

7 A Patrick did.

8 Q Patrick did? And what issues did Patrick raise with Ms.
9 Todd and ask her to respond to?

10 A The way she spoke to our patients, our neighbors, and
11 issues -- excuse me -- about food, withholding food or talking
12 to people about the way they eat their food.

13 Q Did you make any notes of that conversation?

14 A I did.

15 Q Okay. And would it refresh your recollection to see those
16 notes?

17 A Yes.

18 Q Okay. I'm going to show you Respondent's Exhibit 3.

19 JUDGE SANDRON: You know -- you know, I was thinking.
20 If -- if you're using it to refresh, you can show it to other
21 counsels, but it -- it real -- I guess technically I shouldn't
22 really see it.

23 MS. LANOUEETTE: I'm going to offer it as an exhibit --

24 JUDGE SANDRON: All right.

25 MS. LANOUEETTE: -- after. But I -- I do want to make sure

1 it's clear on the record what she remembers versus what's in
2 the notes --

3 JUDGE SANDRON: All right.

4 MS. LANOUEETTE: -- before I --

5 JUDGE SANDRON: That's fine. All right. You can go ahead
6 and put it up.

7 MS. LANOUEETTE: Because I believe Mr. Weir testified he
8 relied on it in making the decision, so --

9 JUDGE SANDRON: All right. I believe so. That -- that's
10 fine. We have to kind of --

11 MS. LANOUEETTE: I -- I know. She has to see it.

12 JUDGE SANDRON: -- adjust to the Zoom and format.

13 A Okay.

14 Q BY MS. LANOUEETTE: Okay. Don't look at the screen.
15 Does --

16 A Sorry.

17 Q -- that refresh your recollection regarding the topics
18 that were raised?

19 A Yes.

20 Q Other than how she treated neighbors and food issues, what
21 other issues did you ask her to respond to?

22 A We asked her about being on her phone.

23 Q Okay.

24 A And we also asked her about how neighbors know things
25 about other neighbors that they should not know.

1 Q And what did Ms. Todd respond for each of these things?

2 A That she didn't -- there were no issues and that she
3 wasn't on her phone and that -- yeah. She couldn't help if
4 neighbors talk to neighbors.

5 Q And what did you do at that time?

6 A We offered her the opportunity to come in and write a
7 statement.

8 Q And did she do so?

9 A She did not.

10 Q Okay. I'm going to show you, now, what's been marked as
11 Respondent's Exhibit 2 and ask if you recognize it. Ms.
12 Carchidi, do you recognize that document?

13 A I do.

14 Q Whose -- whose handwriting is in Exhibit 2?

15 A That's my awful handwriting.

16 Q When did you make these notes?

17 A November.

18 Q November 12th, 20 -- 9 --

19 A November 12th, yeah.

20 Q Did you make these notes at the time you were conducting
21 the interviews or after?

22 A This was at the time.

23 Q And did you make these notes in the ordinary course of
24 your job duties as the director of nursing at Northeast Center?

25 A Yes.

1 MS. LANOUEETTE: Offer Respondent's 2.

2 JUDGE SANDRON: All of those initials are by the
3 residents, all of those initials, like S.G.?

4 MS. LANOUEETTE: Yes, Your Honor. I -- I did the
5 redaction.

6 JUDGE SANDRON: Oh, okay.

7 MS. LANOUEETTE: And they were all patient names that I
8 redacted.

9 THE WITNESS: Can we just scroll down so I can just see
10 the -- the whole page?

11 JUDGE SANDRON: Yes. Why don't we see the whole document?
12 Okay. And you wrote these as you went along --

13 THE WITNESS: Yes.

14 JUDGE SANDRON: -- talking to the patients?

15 THE WITNESS: Yes.

16 MS. PENDER: No objection.

17 JUDGE SANDRON: All right. Hearing no objections, the
18 document is received.

19 **(Respondent Exhibit Number 2 Received into Evidence)**

20 Q BY MS. LANOUEETTE: And now, Ms. Carchidi, I'm going to
21 show you what's been marked as Exhibit 3 again. Except this
22 time, I want to ask you: Who's writing is in Exhibit 3?

23 A That's -- that's mine again.

24 Q Okay. When did you make this document?

25 A On November 13th.

1 Q Okay. And how did you make this document? Did you make
2 it --

3 A On the --

4 Q -- afterwards?

5 A As -- as we were talking.

6 Q Did you make this note in the ordinary course of your
7 duties as the director of nursing at Northeast Center?

8 A Yes.

9 MS. LANOUEETTE: Offer Exhibit R-3.

10 MS. PENDER: A voir dire question, Your Honor?

11 JUDGE SANDRON: Yes.

12 **VOIR DIRE EXAMINATION**

13 Q BY MS. PENDER: Ms. Carchidi, you -- as you were making
14 this document as the conversation was ongoing, does this
15 document contain everything that was talked about in the
16 conversation?

17 A Not every single word, I'm sure. But the -- yeah, most of
18 what was said.

19 MS. PENDER: No objection.

20 JUDGE SANDRON: Hearing no objections, the document is
21 received.

22 **(Respondent Exhibit Number 3 Received into Evidence)**

23 **RESUMED DIRECT EXAMINATION**

24 Q BY MS. LANOUEETTE: After you -- sorry. After Ms. Todd was
25 suspended, what were the next steps in the investigation?

1 A Social work would go -- social work went out and spoke to
2 more -- more of the patients.

3 Q Okay. And what else happened?

4 A I'm so sorry. Cindy and I spoke to people.

5 Q When you say --

6 A Staff.

7 Q -- people, what kind of people?

8 A Staff.

9 Q What did you learn from your staff in areas?

10 A That there were more concerns about medications not being
11 given, food being withheld.

12 Q Okay. Who specifically on the staff did you speak to?

13 A There was Sherry.

14 Q And what is Sherry's position?

15 A Sherry is a CNA. And I also spoke to --

16 JUDGE SANDRON: Do we know her last name?

17 THE WITNESS: Oh, I'm sorry. Lewinson.

18 JUDGE SANDRON: Is that who is --

19 Q BY MS. LANOUE: Is that Sheranique?

20 A That was Sheranique, yes. And I also spoke to Kristina
21 Plonski.

22 Q And what is Ms. Plonski's position?

23 A She's a CNA.

24 JUDGE SANDRON: Is -- is that spelled in the record, do
25 you know?

1 MS. LANOUEETTE: I can spell it, Your Honor.

2 JUDGE SANDRON: Well, may -- maybe the witness knows. Do
3 you know how she spells her name?

4 THE WITNESS: It's P -- it's P-L-O-N-S-K-I.

5 Q BY MS. LANOUEETTE: And it's Kristina with a K, right?

6 A Yes.

7 JUDGE SANDRON: Thank you.

8 Q BY MS. LANOUEETTE: And why did you choose Ms. Lewinson and
9 Ms. Plonski to interview?

10 A They worked on the unit.

11 Q On the same shift as Ms. Todd?

12 A Yes, yes. I'm sorry. Same unit, same shift.

13 Q I'm going to show you, now, what's been marked as Exhibit
14 5 and ask if you recognize it -- R-5.

15 Q BY MS. LANOUEETTE: Who's handwriting is on R-5?

16 A That's me.

17 Q Okay. And when did you make this document?

18 A On the 13th of November.

19 Q Okay. So how did you make this note?

20 A While I was talking to Kristina.

21 Q And did you make this note in the ordinary course of your
22 duties at Northeast Center?

23 A Yes.

24 MS. LANOUEETTE: Offer Exhibit R-5.

25 JUDGE SANDRON: Well -- well, it says in there, she has

1 been a little better the last few months. Was that what Ms.
2 Plonski said about Ms. Todd? Or is that what --

3 THE WITNESS: Yes.

4 JUDGE SANDRON: Any further voir dire? Okay. Any
5 objections?

6 MS. PENDER: No objection.

7 JUDGE SANDRON: The document is received.

8 **(Respondent Exhibit Number 5 Received into Evidence)**

9 Q BY MS. LANOUEETTE: What did you learn from social work
10 about their interviews with patients? Well, let me ask first:
11 How did you learn what the results of the social work
12 interviews had been?

13 A They told me.

14 Q Who told you?

15 A The social work -- the social workers.

16 Q Did -- did you meet with each of them or one person or how
17 did -- who did you meet with?

18 A Heather was my primary person.

19 Q Okay. And --

20 JUDGE SANDRON: Okay. What -- what's Heather -- what's
21 Heather's last name?

22 THE WITNESS: Britton-Schrager.

23 MS. LANOUEETTE: Thank you. Heather Britton-Schrager. She
24 is in the record, Your Honor.

25 JUDGE SANDRON: Yes, yes. We have her.

1 MS. LANOUE: Okay.

2 Q BY MS. LANOUE: And what information did she relay to
3 you?

4 A That there were quite a few -- there were several
5 neighbors who were complaining about their medication, general
6 treatment. Food was a big issue.

7 Q Okay. Other than that, the information we've already
8 discussed, did you have any other information provided to you
9 as part of this investigation? Let me show you what's been
10 marked -- or is in evidence as Respondent's 8 and ask if
11 that --

12 A Yes. Yes, I was -- I was given these.

13 Q How did you come into possession of these -- these
14 documents?

15 A It -- Heather gave them to me.

16 Q Okay.

17 A Heather gave me one of them. And then Cindy gave me the
18 other one.

19 Q Okay. Are you familiar with the medications policy at the
20 facility?

21 A I am.

22 Q Okay. And what should an LPN do if a resident on NPR4
23 (sic) will not come to the desk to get medication?

24 A They can -- they can go to the room and prompt them to
25 remind them to come to the med cart. If the person does not

1 want to come, they need to bring the meds to them.

2 Q In the course of this investigation, did you receive
3 additional information from Cindy Pope?

4 A I did.

5 Q And what -- what information did you receive from her?

6 A That one of the people -- very specifically, one person
7 did not wish to come out to the desk because of modesty. They
8 didn't want to come out and that -- they were not receiving
9 their medications, because if they don't come out, they don't
10 get it.

11 Q I'm going to show you what has been marked as Respondent's
12 Exhibit -- I believe it's 4 and ask if you recognize that
13 document.

14 JUDGE SANDRON: All right. Yes, that was received.

15 MS. LANOUEETTE: I'm sorry. Received as Respondent's
16 Exhibit 4.

17 JUDGE SANDRON: Right.

18 Q BY MS. LANOUEETTE: Ms. Carchidi, do you recognize that
19 document?

20 A Yes.

21 Q Okay. And -- and how do you recognize that document?

22 A Cindy had given it to me.

23 Q Okay. I'm going to show you what's been marked as
24 Respondent's Exhibit 7.

25 JUDGE SANDRON: All right. And -- and that was also

1 received.

2 MS. LANOUEETTE: I'm sorry. Received as Respondent's
3 Exhibit 7. I'll get it right at some time today.

4 JUDGE SANDRON: Well, if we get -- it's not a major
5 problem, but it's better to be completely accurate.

6 MS. LANOUEETTE: Accurate.

7 Q BY MS. LANOUEETTE: And Ms. Carchidi, do you recognize the
8 document, Respondent's Exhibit 7?

9 A Yes.

10 Q And how did you come into possession of Respondent's
11 Exhibit 7?

12 A Cathy -- not Cathy; Cindy.

13 Q When did Ms. Pope give you Respondent's Exhibit 7?

14 JUDGE SANDRON: As best as you remember.

15 A Probably the day she typed it up. Cindy's pretty on top
16 of everything.

17 Q BY MS. LANOUEETTE: Who made the decision to terminate Ms.
18 Todd?

19 A Patrick and I did.

20 Q Okay. And why did you believe she should be terminated?

21 A Because the investigation that we did, being that there
22 were issues between the treatment, the not giving the
23 medications, withholding food, making fun of people about the
24 way they eat their food, it -- no.

25 Q Once you had made the decision to terminate, what did you

1 do?

2 A We called her.

3 Q And who spoke during the call?

4 A Patrick did.

5 Q Okay. Did either you or Mr. Weir set to record --

6 JUDGE SANDRON: Or -- or I think maybe you need to lay the
7 foundation for the call.

8 Q BY MS. LANOUEETTE: What do you recall being said during
9 the phone call?

10 A We asked her to come in.

11 Q Okay. And -- and did that happen?

12 A It did. She came in.

13 Q Who -- when she came in, who met with her?

14 A Patrick and I did.

15 Q Where was the meeting held?

16 A Patrick's office.

17 Q And do you remember date and time approximately when?

18 A I -- I don't. I'm sorry. I don't remember what time.

19 Q Okay.

20 JUDGE SANDRON: Well, would you recall morning or
21 afternoon if -- if you can?

22 THE WITNESS: Probably midday.

23 MS. LANOUEETTE: Okay.

24 JUDGE SANDRON: Okay.

25 Q BY MS. LANOUEETTE: And how did the meeting start?

1 JUDGE SANDRON: Well, was anybody else there but the three
2 of you?

3 THE WITNESS: No.

4 JUDGE SANDRON: Okay.

5 Q BY MS. LANOUEETTE: How did the meeting start?

6 A She came in and sat down and Patrick started talking to
7 her.

8 Q And what did he say to the best of your recollection?

9 A That we had concluded the investigation and that she was
10 going to be terminated.

11 Q What, if anything, did she say in response?

12 A She didn't say a lot.

13 Q Okay.

14 JUDGE SANDRON: Do you -- do you recall anything that she
15 said?

16 THE WITNESS: She -- she said -- I -- I believe she was
17 denying what we were saying about -- you know, that wasn't the
18 case; that wasn't the truth.

19 Q BY MS. LANOUEETTE: What, if anything, was said with regard
20 to reporting?

21 JUDGE SANDRON: Oh, well, do you want to just ask her if
22 she recalls anything else?

23 MS. LANOUEETTE: Okay.

24 Q BY MS. LANOUEETTE: Do you recall anything else about the
25 meeting?

1 A Yes.

2 JUDGE SANDRON: That anybody said?

3 THE WITNESS: I'm sorry?

4 JUDGE SANDRON: Yeah, is there --

5 Q BY MS. LANOUEETTE: Do you recall anything else that anyone
6 said? You have to answer verbally: yes, no.

7 A I'm sorry. No.

8 Q Okay.

9 JUDGE SANDRON: All right, okay.

10 Q BY MS. LANOUEETTE: And what, if anything, was said about
11 reporting during the meeting?

12 A Reporting her?

13 Q Well, was anything at all said about reporting?

14 A Patrick had said something that -- this could rise to the
15 level of being reported to the Department of Health.

16 Q Did anyone say -- did either you or Mr. Weir say that it
17 was going to be reported anywhere?

18 A No, no.

19 Q What, if any, conversations had you had with Ms. Todd
20 regarding the Union prior to November of 2019?

21 A When I was ADON still, I had -- I was doing some
22 supervision because we were down a supervisor. And she had
23 said -- I don't even know how it began, but she had said
24 something about somebody. Somebody had asked her about the
25 Union or meetings or something. And she said she was just

1 going to get information, that, you know, she was educating
2 herself. And I said, education's always good. And then I told
3 her about my own personal experience because I had come from a
4 union facility.

5 Q Okay. And was anything else said during that
6 conversation?

7 A No, not really.

8 JUDGE SANDRON: Do you remember -- do you remember --

9 Q BY MS. LANOUEETTE: And this was when you were assistant
10 director of nursing, and do you remember specifically when?

11 JUDGE SANDRON: Right. You said, not really. Do you
12 remember anything else? Just think for a minute. Then if you
13 don't, that's fine.

14 THE WITNESS: Well, it's going to sound silly, but I
15 had -- she likes guacamole. And I made homemade guacamole and
16 she absolutely loved it. So I brought her in a big bowl of
17 homemade guacamole.

18 JUDGE SANDRON: Okay.

19 THE WITNESS: So we talked about guacamole, quite
20 honestly.

21 JUDGE SANDRON: All right.

22 Q BY MS. LANOUEETTE: Okay. Where did this conversation
23 occur?

24 A On NRP4.

25 Q And where on NRP4?

1 A It would have been -- it was behind the nurses' desk,
2 south side.

3 Q Approximately what time of day?

4 A 10:30, 11:00 at night.

5 Q Was anyone else present?

6 A No, not -- not with us.

7 Q Did you know what Ms. Todd's position was with regard to
8 the Union when you made the decision to terminate?

9 A No.

10 Q What, if anything, did your conversation with her or
11 anything you heard about her position with the Union -- how --
12 how, if at all, did that influence your decision to terminate?

13 A Not -- not at all.

14 Q Since taking on the role of director of nursing, have you
15 had occasion to be involved with terminating any other
16 employees for mistreating the patients?

17 A Yes, I have.

18 Q I'd like to show you what's been marked as Respondent's
19 Exhibit 15 and ask if you recognize it.

20 A Yes, I do.

21 Q Who filled out Respondent's Exhibit 15, the handwriting?

22 A That's me.

23 Q Okay. I think that should not be there. That's the
24 wrong -- oh, no. No, that's the investigation. Okay. I'm
25 sorry. Do you recognize the second page of Respondent's

1 Exhibit 15?

2 A Yes.

3 Q And do you know who made the -- that note on the second
4 page of Respondent's 15?

5 A That's me.

6 Q When did you make that note?

7 A The day it -- the day after it happened, I believe.
8 Could've been the same day.

9 Q What did DOA -- oh, that's date of admission?

10 A Where do you see the -- yeah, date of admission for the
11 patient.

12 Q Okay.

13 A Yes.

14 MS. LANOUE: All right. I believe those are the only
15 two pages of that exhibit, and I will need to paginate it.

16 JUDGE SANDRON: That's perfectly fine.

17 Q BY MS. LANOUE: Ms. -- Ms. Carchidi, did you make the
18 documents to change in Exhibit R-15 in the ordinary course of
19 your duties as the director at the -- at Northeast Center?

20 A Yes.

21 Q And is it the ordinary course of business to make and keep
22 such documents?

23 A Yes. Yes.

24 MS. LANOUE: Offer Exhibit R-15.

25 JUDGE SANDRON: Any voir dire?

1 MS. PENDER: A brief one. Ms. Hammonds, could you scroll
2 up to the top of this page? Thank you.

3 **VOIR DIRE EXAMINATION**

4 Q BY MS. PENDER: Ms. Carchidi, who is [REDACTED]?

5 A That is the resident.

6 MS. LANOUEETTE: Oh, so I need to redact that.

7 MS. PENDER: Okay, sorry. I thought it was a staff. It
8 wasn't redacted.

9 MS. LANOUEETTE: I did too.

10 MS. PENDER: Sorry. So --

11 MS. LANOUEETTE: Okay, we'll --

12 JUDGE SANDRON: All right, we'll --

13 MS. LANOUEETTE: -- fix that.

14 MS. PENDER: No objection.

15 JUDGE SANDRON: We'll disregard. Sorry. Yeah, we'll
16 disregard the name.

17 MS. PENDER: Okay.

18 JUDGE SANDRON: Shouldn't -- it shouldn't be in there.

19 Hearing no objections, the document is received.

20 **(Respondent Exhibit Number 15 Received into Evidence)**

21 JUDGE SANDRON: Actually, I -- I suppose we can ask that
22 the name [REDACTED] be removed from the transcript, if that's the
23 last name. I believe it is, so we won't even spell it.

24 MS. LANOUEETTE: I have no more questions, Your Honor.

25 JUDGE SANDRON: All right, well, it's 12:15, so I think

1 this would probably be a good time to take our lunch recess.

2 So maybe about 45 minutes, come back at about 1:00.

3 MS. LANOUEITE: Judge, that sounds --

4 JUDGE SANDRON: Yes.

5 MS. LANOUEITE: -- great. Could -- could I just ask if
6 this witness provided a Jencks statement, and perhaps we can be
7 efficient with the time and ask that the counsel for the
8 General Counsel send it to me, so I could review it during our
9 lunch break rather than take more time of the Court?

10 JUDGE SANDRON: I don't see a problem with that. Do
11 you -- do you have it available, Ms. -- Ms. Pender?

12 MS. PENDER: I do.

13 MS. TUMINARO: Your Honor, I'd like to join in that
14 request.

15 JUDGE SANDRON: That's fine. I don't see a problem with
16 it. You -- do you want to just say, Ms. Pender, the -- the
17 length and date and that?

18 MS. PENDER: Sure. It is four pages, and it is dated
19 December 17th, 2019.

20 JUDGE SANDRON: All right. And -- and just to remind the
21 counsels for the charging parties, the -- you -- you should
22 dispose or destroy any copies of the affidavits after you're
23 done with them.

24 MS. LANOUEITE: Yes. Thank you, Your Honor.

25 MS. TUMINARO: Sure.

1 JUDGE SANDRON: All right, have a good lunch. I'll see
2 everybody at 1:00.

3 MS. PENDER: Thank you.

4 MS. LANOUEETTE: Thank you, Judge.

5 (Off the record at 12:17 p.m.)

6 JUDGE SANDRON: Ready. Back on the record. Ms. Pender,
7 cross-examination?

8 MS. PENDER: Yes. Thank you, Judge.

9 **CROSS-EXAMINATION**

10 Q BY MS. PENDER: Hi, Ms. Carchidi. My name is Alicia
11 Pender. I'm the attorney for the NLRB here today. I have some
12 questions for you. If you don't understand my question or if
13 you can't hear me, let me know, and I'll repeat it. Okay? Can
14 you hear me?

15 A Sorry. I can't hear.

16 MS. LANOUEETTE: Try it again. Can you hear us now? She
17 can't hear, Patrick. We are sending technical assistance.

18 JUDGE SANDRON: Thank you.

19 THE WITNESS: I'm sorry. I can't hear anybody. I don't
20 know what happened. I can't hear.

21 JUDGE SANDRON: Hear -- can't hear.

22 THE WITNESS: Oh, okay. Sorry. Thank you.

23 MS. PENDER: Can you hear me now?

24 THE WITNESS: Yeah, I can hear you now. Sorry about that.

25 MS. PENDER: Okay. That's fine.



1 THE WITNESS: I can't --

2 Q BY MS. PENDER: My name is Alicia Pender. I'm the
3 attorney for the NLRB, and I have some questions for you this
4 afternoon. Okay?

5 A Okay.

6 Q Okay. You testified that after Kathy McCormick was
7 terminated and you became the acting director of nursing or
8 interim director of nursing, you found some disciplines in her
9 files that had not been issued to employees?

10 A Yes.

11 Q About how many of those disciplines did you find?

12 A Oh, probably 10 or 15.

13 Q And about how many employees were they -- did they cover?

14 A It -- it was several -- several of them were more --
15 several people had more than one, so I brought them over to HR
16 because I don't keep stuff like that in my file.

17 Q And how many of those did you follow up on?

18 A Some of them weren't even for nursing, and some of them
19 that were from nursing, the nursing staff had already left.
20 They weren't even there anymore.

21 Q Do you have a ballpark number of about how many of those
22 complaints you had followed up on?

23 A Probably three, because some of them dated back several
24 years, so that, you know, I can't do anything with a four-year-
25 old writeup.

1 Q How many disciplines did you issue as a result of what you
2 found in Kathy McCormick's office?

3 A I didn't issue any as a result of what I found in her
4 office. Everything I did, I did fresh.

5 Q Are there -- I know that there are -- there are RNs on
6 each unit, right?

7 A Not necessarily.

8 Q What units don't have RNs?

9 A Right now, NRP2 does not.

10 Q Well, let me ask you this. In --

11 A Oh.

12 Q -- in the fall of 2019, to the best of your recollection,
13 were there RNs on each unit?

14 A As -- as managers, or as unit staff?

15 Q As unit staff.

16 A No.

17 Q Were any RNs as unit staff?

18 A Yes.

19 Q Was there a night RN on NRP4 in 2019?

20 A Yes.

21 Q You testified that after you assumed the -- the director
22 of nursing position, you had a meeting with the unit managers
23 where you told them they were responsible for discipline on
24 their units. Do you recall that?

25 A Yes.

1 Q And you became -- you assumed your role on October 31st of
2 2019?

3 A Yes.

4 Q Do you recall how long a time it was between when you had
5 that meeting and when Tara Golden was discharged?

6 A I don't. I -- I'd have to -- no. I would have to figure
7 that out. Most likely --

8 Q Do you know what date was -- do you know what date she was
9 discharged?

10 A No, off the top of my head, I do not.

11 Q Okay. Prior to you taking over as the interim director of
12 nursing, under Kathy McCormick, would a unit manager be able to
13 suspend an employee without Kathy McCormick's input?

14 A No.

15 Q Would a unit manager be able to write up an employee
16 without Kathy McCormick's input?

17 A Yes.

18 Q You testified that you recalled a conversation with Cathy
19 Todd where the Union was -- was raised, right?

20 A Yes.

21 Q You had more than one conversation with her where the
22 Union came up, right?

23 A No, it was just that one time.

24 Q You didn't have another conversation with her, other than
25 the one you recalled?

1 A No.

2 Q Did she -- did you ever have a conversation with her where
3 she mentioned a health insurance issue being a reason to
4 support the Union?

5 A No, we had had a conversation about her health insurance
6 issue just -- that was just a conversation about her health
7 insurance issue.

8 Q Did you have a conversation with her where she mentioned
9 people feeling targeted by their unit managers?

10 A No. I don't recall that.

11 Q Ms. Carchidi, did -- did you -- you gave an affidavit to
12 the National Labor Relations Board during the investigation of
13 this charge, right?

14 A No. I --

15 Q On the -- you and I talked on the telephone, and you gave
16 a statement.

17 A Okay.

18 Q Do you remember that?

19 A I don't remember. I don't. I honestly don't remember
20 that.

21 Q If I showed you your statement, would -- would that help
22 you remember it?

23 A Probably, yeah.

24 Q Okay.

25 JUDGE SANDRON: Do you think it would -- if you're going

1 to show it to her, it'd be better to do that in a -- can that
2 be -- where they can -- you can show it to her without
3 everybody else seeing it?

4 MS. PENDER: You mean, like, in a breakout room?

5 JUDGE SANDRON: Yeah, because I -- I think you can --

6 MS. PENDER: Okay.

7 JUDGE SANDRON: You have a right to --

8 MS. LANOUEETTE: We have -- but we have it. I think all
9 the parties have it.

10 MS. HAMMONDS: Could we send every -- or could we send
11 everybody but the judge to the breakout room or send --

12 MS. LANOUEETTE: Oh.

13 MS. HAMMONDS: -- just the judge to the breakout room?

14 JUDGE SANDRON: Oh, yeah, that'd be fine, because it's
15 probably better, you know, at this point, I don't see it.

16 MS. PENDER: Yeah.

17 JUDGE SANDRON: So okay, I -- I guess that might be a way
18 to do it. And then, after she's, you know, refreshed or
19 whatever --

20 MS. PENDER: And then --

21 JUDGE SANDRON: -- I can come back.

22 MS. PENDER: -- we can call you back into the room?

23 JUDGE SANDRON: Yes.

24 MS. PENDER: Okay.

25 THE COURT REPORTER: Well, but --

1 JUDGE SANDRON: Should I --

2 THE COURT REPORTER: Are we going off the record for this?

3 JUDGE SANDRON: Would it be easier -- would it be easier
4 if I -- well, I don't know if I exited --

5 MS. HAMMONDS: No, I can just put you in a breakout room.

6 JUDGE SANDRON: You'll put me in a breakout room?

7 MS. HAMMONDS: Yes.

8 JUDGE SANDRON: Oh, okay, that's fine. Then you'll --
9 you'll get me back in when --

10 MS. HAMMONDS: Yes.

11 JUDGE SANDRON: -- she's had a chance to review it? Okay.
12 That'd be better. Fine.

13 MS. HAMMONDS: Okay, I --

14 THE COURT REPORTER: Should I go off the record when we're
15 in the breakout -- you're in the breakout room, Judge?

16 JUDGE SANDRON: I'm -- I'll be the only one in the
17 breakout room.

18 THE COURT REPORTER: Right. Should -- should I go off the
19 record during that, then? You don't want that recorded, right?

20 JUDGE SANDRON: Yes. Yes.

21 THE COURT REPORTER: Okay.

22 JUDGE SANDRON: Good idea.

23 THE COURT REPORTER: Okay.

24 JUDGE SANDRON: We'll go off the record.

25 (Off the record at 1:09 p.m.)

1 JUDGE SANDRON: What was the date of the affidavit, Ms.
2 Pender, just so we have it on the record?

3 MS. PENDER: It was December 17th, 2019.

4 JUDGE SANDRON: All right. And you can proceed to ask her
5 if she's refreshed.

6 MS. LANOUEETTE: We object, Judge. The witness indicated
7 she did not recall giving the affidavit.

8 MS. PENDER: Well, she recognized her initials on each
9 page and her signature at the end.

10 JUDGE SANDRON: Is that correct, Ms. Lanouette?

11 MS. LANOUEETTE: She did recognize her signature and
12 initials but indicated she did not recall giving the affidavit.

13 JUDGE SANDRON: Well, Ms. Pender, you represent that you
14 record -- you -- how -- how did she actually -- the mechanics
15 of her signing, how did that work? Did you prepare it and send
16 it to her?

17 MS. PENDER: Yes. We -- we talked on the phone. I
18 prepared the affidavit. I sent it to Ms. Carchidi and Ms.
19 Lanouette, and Ms. Lanouette returned it to me. I -- and with
20 the -- with the initials and signature on it.

21 JUDGE SANDRON: Is -- is that correct, Ms. Lanouette?

22 MS. LANOUEETTE: That is the best of my recollection, yes.

23 JUDGE SANDRON: All right. Well, I'll -- I'll -- I'll
24 then have to -- I'll accept it, then, as her affidavit.
25 It's -- as the -- if those are the circumstances and she'd

1 signed and initialed and it was returned by Counsel, then
2 whether she says she recalls it or not, I will take it as her
3 affidavit.

4 MS. PENDER: Thank you, Your Honor.

5 **RESUMED CROSS-EXAMINATION**

6 Q BY MS. PENDER: Ms. Carchidi, after looking at the
7 document, does that refresh your recollection of -- of how many
8 meetings you had with -- how many conversations you had with
9 Cathy Todd about the Union?

10 A I -- I do remember talking about her insurance issues.
11 Something wasn't being paid for or something. I do remember
12 that. Whatever --

13 Q Do you -- sorry. Go ahead.

14 A I'm sorry. Go ahead.

15 Q Do you remember having more than one conversation with
16 her --

17 A I --

18 Q -- where the Union --

19 A I --

20 Q -- was raised?

21 A -- don't honestly remember having more than one. It --
22 it -- did I? It's possible. I just remember the night of the
23 guacamole, probably because it had to do with food.

24 Q And do you now recall Ms. Todd mentioning people feeling
25 targeted?

1 MS. LANOUE: Objection. The witness said she doesn't
2 recall any other conversations, even after seeing the
3 affidavit.

4 JUDGE SANDRON: Well, I think if Ms. Pender wants to
5 introduce the affidavit or portions as impeachment, she can.

6 MS. PENDER: I do, Your Honor. I would like to offer just
7 the one paragraph that's --

8 JUDGE SANDRON: Yes.

9 MS. PENDER: -- relevant to this line of questioning.

10 JUDGE SANDRON: Yes.

11 MS. PENDER: Should I share it on my screen at this point?

12 JUDGE SANDRON: The one -- or you want to read it into the
13 record?

14 MS. PENDER: Or I'm going to read paragraph three of Ms.
15 Carchidi's affidavit. It is the first full paragraph on page
16 two.

17 JUDGE SANDRON: All right.

18 MS. PENDER: It says, "LPN Cathy" --

19 JUDGE SANDRON: Oh, wait. Wait a second. Everybody --

20 MS. PENDER: Okay.

21 JUDGE SANDRON: -- has -- has the -- other counsels have
22 the affidavit?

23 MS. PENDER: I believe so, yes.

24 JUDGE SANDRON: All right, so why don't you go ahead and
25 just read that paragraph.

1 MS. PENDER: Okay.

2 "LPN Cathy Todd talked to me about the Union while I
3 was the -- when I was the ADON a few times when I was
4 supervising at night. I do not remember when these
5 conversations took place. I believe they were in
6 about the late summer. They took place before I
7 became DON. I told her my personal experience at
8 Union facilities. Ms. Todd told me she had gone to a
9 Union meeting, because she wanted to find out what it
10 was about, that she wanted to be educated. On one
11 occasion, she mentioned a struggle with her health
12 insurance. She did not mention wanting a better
13 pension to me. Once she mentioned something to me
14 about LPNs feeling targeted by supervisors."

15 And that's the end of the paragraph.

16 JUDGE SANDRON: All right. It's in the record.

17 MS. PENDER: Thank you.

18 Q BY MS. PENDER: Ms. Carchidi, you and Patrick Weir called
19 Cathy Todd on November 13th, 2019, to let her know she was
20 being suspended; is that correct?

21 A I don't remember the date off the top of my head, but
22 probably somewhere thereabout.

23 Q And at -- and at some point, you were provided further
24 documentation by Cindy Pope and Heather Britton-Schrager
25 regarding Ms. Todd's behavior; is that right?

1 A Yes.

2 Q And you got that supplemental documentation after you had
3 the suspension conversation with Ms. Todd, right?

4 A Yes.

5 Q And you didn't have a follow-up interview with Ms. Todd
6 about those -- that other information, right?

7 A Yeah.

8 Q When -- when social work finished interviewing neighbors,
9 Heather Britton-Schrager brought you the results of that
10 investigation; is that correct?

11 A Yes.

12 Q Did she show the actual neighbor interview forms that --
13 that -- that social work had completed with the neighbors?

14 A They do have forms, yes.

15 Q Did she show you those specific forms?

16 A Yes.

17 Q I'm going to show you what is Respondent's Exhibit --
18 wait, Respondent Exhibit 6. I can share my screen and show
19 this. Let me know when you can see my screen, Ms. -- Ms.
20 Carchidi.

21 A I can see that.

22 Q Okay. Are these -- I'm going to scroll through some pages
23 and have you tell me if these are the -- the social work
24 interviews that Ms. Britton-Schrager brought to you. And I
25 believe they're also in the binder in front of you, if you'd

1 like to look at them on paper, as opposed to the screen.

2 A Yes. Yes, this --

3 Q These are the -- these are the social work surveys you --
4 you saw?

5 A Yes.

6 Q I'm going to direct your attention to the third page, page
7 3 of 72, down at the bottom. Question 6, when it says has
8 staff ever yelled or been rude to you, one CSS person, reddish
9 hair. Do you see that?

10 A I do.

11 Q To your knowledge, was this CSS person disciplined for
12 being rude to this neighbor?

13 A It's possible.

14 Q Well, do you know?

15 A I -- I don't know, no.

16 Q Okay. All right, I'm going to direct your attention to
17 page 12 of 72 of this document. Down at the bottom, do you see
18 the afterthought portion?

19 A Yes.

20 Q Did you conduct any kind of investigation of Ms. Pope for
21 switching roommates without counseling people?

22 A I would have said something about that because that's
23 not -- we don't randomly move people around.

24 Q Well, do you remember specifically?

25 A I do not remember that specifically, her moving people

1 around. I mean --

2 Q I'm going to direct your attention to page 29 of 72 of
3 Exhibit R-6. Do you see under number 4, "Would you say that
4 staff treats you like an individual" -- where it says "Cindy
5 Pope treats me like individual asshole"? Do you see that?

6 A I -- I do see that.

7 Q Was Ms. Pope disciplined, to your knowledge for -- for --
8 as a result of this complaint?

9 A No.

10 Q And down on -- under number 6 on this same page, "Have
11 staff ever yelled or been rude to you?" It says, "Yes, Cindy."
12 Was Ms. Pope disciplined for that?

13 A No, I don't believe.

14 Q And this the same neighbor, the second page of their
15 survey, under 8, "Do you feel that staff provides you the same
16 care they provide to other neighbors on the unit?" and it says,
17 "No. Cindy favors." Was Ms. Pope disciplined as a result of
18 this complaint?

19 A No.

20 Q I'm going to direct your attention to the next page, which
21 should be page 31 of 72. Toward the bottom, it says under 6,
22 "Have staff ever yelled or been rude to you?" "Yes. Judy."
23 Do you know who Judy is?

24 A Judy the CNA?

25 Q I'm asking if you know who -- who the Judy referenced

1 here?

2 A There's -- there's a Judy who's this -- who's a CNA, and
3 she was on nights on that unit.

4 Q Was any discipline issued to Judy as a result of this
5 neighbor complaint?

6 A I believe I did write Judy up, and I spoke to her.

7 JUDGE SANDRON: And what's Judy's last name?

8 THE WITNESS: Roebuck, R-O-E-B-U-C-K.

9 JUDGE SANDRON: Thank you.

10 Q BY MS. PENDER: And at 33 of 72 under number 6, "Have
11 staff yelled or been rude to you?" "Just Katie. That's about
12 it." Do you know what Katie this is in reference?

13 A That I don't know. I'm sorry.

14 Q Do you know if any Katie was disciplined as a result of
15 this complaint?

16 A I'm going to say no because I don't know who Katie is.

17 Q Okay. The last one I'm going to show you is this. We're
18 on page 67 of 72. Under the first question, "When staff enters
19 your room, what do they do?" and it says, "A male nurse says,
20 what a fucking mess." Do you see that?

21 A I do see that.

22 Q Was any male nurse disciplined as a result of this
23 neighbor -- or neighbor's statement?

24 A At that point in time, I don't believe we had any male
25 nurses working down on that unit.

1 Q Okay. I just have a couple more questions for you. I'm
2 going to show you Respondent Exhibit 15, which you already
3 looked at on -- on your direct testimony. Can you see my
4 screen?

5 A I can.

6 Q Okay. And you recall that this was the -- the employee
7 who was terminated?

8 A Yes.

9 Q And you -- you were part of the investigation. You
10 performed the investigation that led to her termination?

11 A Yes.

12 Q In your time as director of nursing, have you participated
13 in other investigations and disciplines of other staff, aside
14 from this employee and Cathy Todd?

15 A I have.

16 Q Did you -- did you take part in an investigation of a
17 nursing supervisor named Lori George?

18 A I did.

19 JUDGE SANDRON: Do want to spell that? Do you want her
20 to --

21 MS. PENDER: Yes. It's L-O-R-I G-E-O-R-G-E.

22 Q BY MS. PENDER: I'm showing you now --

23 MS. PENDER: I haven't -- I haven't marked it, Your Honor.
24 I -- I will before -- when I offer it. It's one, two, three,
25 four, five, six pages. It's a disciplinary report for Lori

1 George, a nursing supervisor, from May 10th, 2020.

2 Q BY MS. PENDER: Ms. Carchidi, is that your signature under
3 supervisor's signature?

4 A It is.

5 Q And were you part of the investigation of this incident?

6 A I was, yes.

7 Q And were you part of the -- the -- were you involved in
8 the decision to issue this discipline?

9 A Yes.

10 Q And I'm going to show you the next page. Are these all
11 pages relevant to the investigation of this incident?

12 A This one is.

13 Q This one?

14 JUDGE SANDRON: Well -- well, which one? I don't think
15 it's clear from the record.

16 MS. PENDER: Oh, we're -- I'm sorry. We're on page --
17 it's Bates stamped 001467 in the top right corner.

18 Q BY MS. PENDER: And the next page, 001468, is that part of
19 the investigation?

20 A Yes.

21 Q 001469, the next page, is this part of the investigation?

22 A Yes.

23 Q And what about this, page 01 -- 001466, which looks like a
24 continuation of the prior page; is that correct?

25 A Hang on. Now they're --

1 Q Can you --

2 A Yeah. Now they're all --

3 Q Okay, let me scroll up. This is -- this is page --

4 A Okay.

5 Q -- 2 of the document, 001465, that --

6 A All right.

7 Q -- I'm showing you now.

8 A Yeah.

9 Q And then, correct me if I'm wrong. It looks like under

10 the notes section at the bottom of this page, it then continues

11 on to 001466.

12 A I'm -- I'm -- I was trying to read the first part of that

13 note.

14 JUDGE SANDRON: Can you make it a little bigger? Is it

15 possible that you --

16 MS. PENDER: Yeah, I can -- let's see.

17 JUDGE SANDRON: Yeah, maybe --

18 MS. PENDER: Maybe that --

19 JUDGE SANDRON: -- that'd be easier to read.

20 MS. PENDER: Okay. Hold on.

21 THE WITNESS: Because that doesn't look like the same

22 person's notes -- the same patient's notes. Because that --

23 the person who was locked in the bathroom was not PBS.

24 Q BY MS. PENDER: So which of these pages doesn't belong?

25 A Okay. The -- the page that you were just on before, when

1 I said that one --

2 Q This one?

3 A That one.

4 Q Yes.

5 A And the next one down.

6 Q Okay.

7 A Don't have anything to do with that event. That is a --
8 like a weekly summary note.

9 MS. PENDER: Okay. Okay. So these were pulled from
10 Respondent's produced -- Respondent's subpoena production. I
11 would like to offer not the two pages that the witness said
12 are -- are not relevant, but going by the Bates stamp at the
13 top, 001464, 001467, and 001468. And I -- I'll mark them as
14 General Counsel Exhibit 16, and I'll offer those.

15 **(General Counsel Exhibit Number 16 Marked for Identification)**

16 MS. LANOUE: Is there a last page --

17 JUDGE SANDRON: Could you --

18 MS. LANOUE: Sorry. Is that the last page of the
19 document?

20 MS. PENDER: This is -- oh, there's -- sorry. There's
21 also 001469, which is the last page of the document. Thank
22 you.

23 JUDGE SANDRON: So can you -- can you redo it and get --

24 MS. PENDER: I will, yeah. Yep. I'll --

25 JUDGE SANDRON: -- take out the -- take out

1 the superfluous pages?

2 MS. PENDER: Yeah, I'll take out the surplus pages, and
3 I'll properly paginate and mark it as an exhibit.

4 MS. LANOUE: What was the exhibit number? I didn't
5 hear.

6 MS. PENDER: 16.

7 JUDGE SANDRON: 16. No -- any objections?

8 MS. LANOUE: No objection.

9 JUDGE SANDRON: All right. The four pages of the document
10 will be received as General Counsel's Exhibit 16.

11 **(General Counsel Exhibit Number 16 Received into Evidence)**

12 MS. PENDER: Thank you, Your Honor.

13 Q BY MS. PENDER: And Ms. Carchidi, the -- the RN supervisor
14 at issue in this case was not terminated, was she?

15 A She was not. She was suspended.

16 Q For how long?

17 A For a week, and then she was demoted.

18 Q To what position?

19 A Staff nurse -- unit nurse.

20 Q Since this time --

21 MS. PENDER: I'm going to stop sharing my screen.

22 Q BY MS. PENDER: Since -- in it -- other than Lori George,
23 had you ever been involved in an incident with a nursing
24 supervisor or manager where that person was also demoted?

25 A Yes.

- 1 Q And who was that person?
- 2 A Her name was Stacey. Her name is Stacey.
- 3 Q What's her last name?
- 4 A Finch, F-I-N-C-H.
- 5 Q And Stacey is S-T-A-C-E-Y or C-Y?
- 6 A Yes.
- 7 Q Yes. Okay.
- 8 A C-E-Y.
- 9 Q Do you remember when the incident with Stacey Finch
- 10 occurred?
- 11 A A few months ago.
- 12 Q A few months from now?
- 13 A Yeah. A few months ago from now.
- 14 Q And tell me, to the best of your recollection, what
- 15 happened in that incident.
- 16 A We were just finishing up morning report, and it was time
- 17 to swab everybody, and --
- 18 Q Swab everybody for -- for what?
- 19 A Oh. I'm sorry. Do COVID swabbing on all of our patients
- 20 in house.
- 21 Q Okay. And what happened?
- 22 A She had an ex -- just a verbal explosion and cursing and
- 23 everything and slammed out of there. Then she went over into
- 24 the café, where she continued.
- 25 Q And what happened next?

1 A Then she went to -- probably out for a cigarette and then
2 back to work.

3 Q And what -- what happened if -- as a result of her
4 outburst?

5 A She was also suspended, written up, and then she was
6 demoted.

7 Q Demoted from what position to what position?

8 A Unit manager to unit nurse.

9 JUDGE SANDRON: Did we get her name?

10 MS. PENDER: Yes. Stacey --

11 JUDGE SANDRON: Okay.

12 MS. PENDER: -- Finch.

13 JUDGE SANDRON: Oh, okay. Yes for that one.

14 Q BY MS. PENDER: And she was -- she was demoted. She
15 wasn't terminated, right?

16 A Was not.

17 Q Okay.

18 MS. PENDER: I've got nothing further for this witness,
19 Your Honor.

20 JUDGE SANDRON: Okay. Ms. Tuminaro?

21 MS. TUMINARO: Just a few questions, Your Honor.

22 CROSS-EXAMINATION

23 Q BY MS. TUMINARO: Ms. Carchidi, you testified that there
24 are approximately 175 to 200 nursing employees at the facility;
25 is that right?

- 1 A Correct.
- 2 Q And how many CNAs are there? And I'm talking about in
3 2019.
- 4 A Oh. I -- I'm not going to be able to give you that
5 number, honestly.
- 6 Q More than -- more than 100?
- 7 A They're -- no, they're about a third of the -- third -- a
8 third to a half of the staff, somewhere in that area.
- 9 Q A third to a half of the 175 to 200 --
- 10 A Right.
- 11 Q -- are CNAs? And about how many LPNs are there?
- 12 A Off the top of my head, 20, 25.
- 13 Q Were you involved in compiling documents in response to
14 the subpoenas that were served on Northeast in connection with
15 this matter?
- 16 A I don't believe I was, no.
- 17 Q You didn't -- you didn't review your files for disciplines
18 that were issued?
- 19 A I -- I don't keep disciplines in my office. They all go
20 over to HR.
- 21 Q Okay. And did you -- what about the evaluations that were
22 performed? Did you review files to search out evaluations?
- 23 A They go to HR also. I don't keep any personnel records in
24 my office. It's open all the time.
- 25 Q Okay.

1 MS. TUMINARO: Can we have Respondent -- well, hang on a
2 second. Let me see if I can do it. Hold on.

3 Now that we have the bookmark.

4 Okay.

5 All right. I'm going to -- I'm going to attempt to share
6 my screen.

7 JUDGE SANDRON: All right. You can try to then -- if
8 you -- if you have an issue, maybe Ms. Hammonds can help us.

9 MS. TUMINARO: Yeah. Okay.

10 JUDGE SANDRON: I don't know how to do it either.

11 MS. TUMINARO: Here is -- I'm going to share what has been
12 admitted into evidence --

13 JUDGE SANDRON: Oh.

14 MS. TUMINARO: -- as Respondent's 28.

15 Q BY MS. TUMINARO: Can you see this document? That's the
16 first page.

17 JUDGE SANDRON: You need to scroll --

18 MS. TUMINARO: Yes.

19 JUDGE SANDRON: -- down. But wait, it's on there. You
20 did get it on there.

21 MS. TUMINARO: Okay. So let me try and do it slowly.

22 Ah. Hold on. All right.

23 Q BY MS. TUMINARO: So here is Respondent's 28. These are
24 the -- these are the evaluations that were identified by the
25 facility for 2019 in the nursing staff. Do you recognize these

1 documents?

2 A Yes.

3 Q Okay. And I think you said that nurses have different
4 evaluations than CNAs, correct?

5 A Correct.

6 Q And the nurses are longer; is that right?

7 A Yes.

8 Q And the nurses we're referring to here are not registered
9 nurses but LPNs?

10 A Those two are, yes.

11 Q Okay. Now I'm going to scroll to -- here's a -- this is
12 page 8 of 19 on R-28. What's the title of this individual, if
13 you can tell?

14 A Mary Harte. She's an LPN.

15 Q Okay. And this is a one-page evaluation, correct? I just
16 scrolled to the next page to show you.

17 A Yeah. They don't look like they were done on the right
18 ones.

19 Q Okay. This one is -- is dated -- it's hard to read the
20 date, but it looks like it's August of 2019. Do you see that
21 at the top?

22 A Yes.

23 JUDGE SANDRON: And Harte is H-A-R-T-E, just for the
24 record.

25 MS. TUMINARO: Thank you, Judge.

1 Q BY MS. TUMINARO: Or actually, maybe that was done in --
2 in -- sorry. Maybe that was done in March of 2019, judging
3 from the bottom here.

4 And then the next page, which is page 9 of 19, this is
5 another one-page evaluation, correct?

6 A It is.

7 Q And what's the title of -- what's the job title of this
8 individual?

9 A That's another LPN.

10 Q And here's page 11 of 19 on Respondent's 28. And is
11 this -- this is another LPN, correct?

12 A It is.

13 Q This is a one-page evaluation, correct?

14 A It is.

15 Q And this was done in November of 2019, after you were the
16 DON, correct?

17 A Correct.

18 Q And this has -- these one-page evaluations have seven
19 categories that the individual is judged on, correct?

20 A Yes.

21 Q Okay.

22 MS. LANOUILLE: Your Honor, I just want to note for the
23 record that while the evaluation portion is one page, the
24 signatures are on a second page.

25 MS. TUMINARO: Well, that's true for some of them. Page 7

1 of 19 is all on one page, right? And page -- some of them have
2 a signature. Page 8 of 19 is all one page.

3 JUDGE SANDRON: All right.

4 MS. TUMINARO: So --

5 JUDGE SANDRON: All right. Well, I think as long as we
6 know they're complete, either --

7 MS. TUMINARO: Yes.

8 JUDGE SANDRON: -- one or two pages, that is sufficient.

9 MS. TUMINARO: And just -- I'm going to go back to the --
10 I don't want to make anyone dizzy, but I'm going to go back to
11 the front of the document.

12 This one does not have it. Hang on.

13 Could we go off the record for one second?

14 JUDGE SANDRON: Yes. Off the record.

15 (Off the record at 1:40 p.m.)

16 Q BY MS. TUMINARO: Ms. Carchidi, this has been admitted
17 into evidence as Exhibit R-57. This is Cathy Todd's
18 evaluation. Just take a quick minute to look at it. I think
19 it's one of the three-page documents.

20 Do you see that there, Ms. Carchidi?

21 A Yes.

22 Q And this -- in this evaluation --

23 MS. TUMINARO: Just scroll up one more page, if you would,
24 Ms. Lanouette? Oh, wait. Not so fast.

25 Q BY MS. TUMINARO: Ms. Todd was evaluated on 27 different

1 criteria, correct?

2 A Yes.

3 MS. TUMINARO: All right. You can take it down. I'm done
4 with this document.

5 Q BY MS. TUMINARO: Ms. Carchidi, this was your first
6 investigation in your capacity as DON at Northeast, correct?

7 A Yes.

8 Q Ms. -- in Respondent's 15 you testified about an employee
9 whose name I'll try to pronounce. I think it's Emily Cronheim-
10 Corbett (phonetic). And you terminated her employment on or
11 about November 11th of 2020. Do you recall that?

12 A Yes.

13 Q How long had Ms. Cronheim-Corbett worked at Northeast by
14 the time you terminated her employment?

15 A Off the top of my head, I don't know.

16 Q Is that the only person you've terminated since you've
17 been DON?

18 A No.

19 Q Other than Ms. Todd.

20 A No.

21 Q There have been other individuals who have had issues with
22 medication administration, correct?

23 A Yes.

24 Q And I'm going to show you -- and you know, hang on one
25 second. Hold on. Sorry.

1 MS. TUMINARO: Okay. I'm going to attempt to share my
2 screen.

3 JUDGE SANDRON: I think, you know, Ms. Hammonds can assist
4 us if --

5 MS. TUMINARO: Hang on one second. Well, she doesn't -- I
6 just got this document paginated, so --

7 JUDGE SANDRON: Oh, I see.

8 MS. TUMINARO: All right. Here. Let's try it now. Okay.

9 Q BY MS. TUMINARO: Ms. Carchidi, I'm going to show you
10 what --

11 MS. TUMINARO: -- we'll mark for identification --

12 JUDGE SANDRON: Okay.

13 MS. TUMINARO: -- as Union Exhibit 3. I'm going to try
14 and make it a little bigger.

15 **(Union Exhibit Number 3 Marked for Identification)**

16 Q BY MS. TUMINARO: Can you see what's on my screen?

17 A I can see it. I just can't read it.

18 MS. TUMINARO: Oops. I made it too big. Sorry. My
19 computer's catching up with me --

20 JUDGE SANDRON: Okay.

21 MS. TUMINARO: -- but it's gotten --

22 THE WITNESS: Okay.

23 MS. TUMINARO: -- too big. Sorry. I'm making it a little
24 smaller.

25 Q BY MS. TUMINARO: Okay. Can you see that now?

1 A I can.

2 Q And do you recognize this document?

3 A That's a disciplinary report.

4 Q And who is it of?

5 A This is for a LPN.

6 Q Okay. And what kind of disciplinary -- just, you know,
7 you don't have to get into details, but this is a failure to
8 properly administer medication, correct?

9 A This -- this is a missed an entry, yes.

10 Q Okay. And this person got a verbal warning, right?

11 A Yes.

12 MS. TUMINARO: I'm going to turn to the next page. This
13 is page -- it's hard to see -- it's 2 of 18 on Union Exhibit 3.

14 Q BY MS. TUMINARO: This is a disciplinary notice of an LPN
15 as well, correct?

16 A It is.

17 Q And this is failure to follow duties for wound care,
18 correct?

19 A Yes.

20 Q And falsifying documentation, correct?

21 A Yes.

22 Q This person received a verbal warning?

23 A Yes.

24 Q I'm going to turn to the next page. This one, actually,
25 is older. This is June of 2018, so this is when, I believe,

- 1 Kathy McCormick was the DON, correct?
- 2 A Correct.
- 3 Q And this is a disciplinary action for failure to complete
- 4 a narcotic count, correct?
- 5 A Correct.
- 6 Q And the person on page 3 of 18, this individual LPN
- 7 received a verbal warning, correct?
- 8 A Correct.
- 9 Q The next page is an LPN who last name is Blitts,
- 10 B-L-I-T-T-S, correct?
- 11 A No. No. It's -- it's Brittany (phonetic) Litts.
- 12 Q Oh. Sorry. Thank you for clarifying. Brittany Litts.
- 13 And this one is page 4 of 18 on Union Exhibit 3. It's dated
- 14 October 21, 2020. This is a -- also a verbal warning for
- 15 failure to follow doctor's orders for wound care?
- 16 A Correct.
- 17 Q And falsifying documentation?
- 18 A Yup.
- 19 Q The next page, which is 5 of 18 on Union Exhibit 3, is a
- 20 verbal warning issued to Tina Reesh (phonetic), LPN, for
- 21 medications left on the meal tray at lunch, correct?
- 22 A Yes.
- 23 Q A verbal warning, correct?
- 24 A Correct.
- 25 Q The next page --

1 JUDGE SANDRON: All right. Well, are -- all of these
2 appear to be verbal warnings.

3 MS. TUMINARO: I -- well, one of them is an education
4 here, but I -- I couldn't -- one of them is blank, on page 8 of
5 18. It's -- we could ask the witness if she knows. I don't --
6 I can't tell what the discipline was that was here, other than
7 it appears the person wasn't terminated. We can ask the
8 witness.

9 JUDGE SANDRON: But all of the other 8 -- all of the other
10 17 are clearly, on their face, verbal warnings.

11 MS. TUMINARO: Some of them are written warnings.

12 JUDGE SANDRON: Oh, I see. They're different kind of
13 warnings.

14 MS. TUMINARO: They are different, because there's
15 different -- about somewhat different conduct, but they all
16 appear to be, I think, for LPNs engaged in, you know, somewhat
17 similar conduct to Ms. Todd.

18 MS. LANOUE: Objection to the characterization.

19 JUDGE SANDRON: Yeah. Well, I think maybe the witness can
20 review them first to see if she recognizes they're all LPNs.
21 That's what you -- you believe --

22 MS. TUMINARO: That's what I was trying to do, Your Honor,
23 but if it's -- if it was too tedious the way I was doing it, we
24 could -- we could --

25 JUDGE SANDRON: Well, do we know they're all LPNs, or we

1 don't know that?

2 MS. TUMINARO: I think that all of the positions appear to
3 be LPNs.

4 JUDGE SANDRON: On the faces of the documents.

5 MS. TUMINARO: On the face of the documents, yes.

6 JUDGE SANDRON: All right. So why -- I think, to that
7 extent, the documents will speak for themselves. I wouldn't
8 think there'd be any --

9 MS. TUMINARO: Okay. That's fine.

10 JUDGE SANDRON: -- question.

11 MS. TUMINARO: I appreciate that.

12 JUDGE SANDRON: But --

13 Q BY MS. TUMINARO: And -- and Ms. --

14 MS. TUMINARO: I didn't mean to cut you off, Judge.

15 JUDGE SANDRON: No, go ahead. Go ahead.

16 Q BY MS. TUMINARO: Ms. -- Ms. Carchidi, are these
17 disciplinary reports documents maintained in the ordinary
18 course of business by Northeast?

19 A Yes.

20 Q Okay.

21 MS. TUMINARO: I'm going to move the admission of these
22 documents, which I'll represent for the record, they are a
23 Bates stamp number that -- that Respondents put at the top
24 right of the document in response to the Union's subpoena.

25 MS. LANOUILLE: And will you be providing us with a copy

1 of what you've taken out of that Bates stamp and made as part
2 of this exhibit?

3 MS. TUMINARO: Well, I -- I -- the Bates stamp numbers are
4 somewhat self-evident, so from 354 --

5 JUDGE SANDRON: Oh.

6 MS. TUMINARO: -- to 360 it shows that I didn't include
7 those documents. I didn't -- they were of -- I'll represent --

8 MS. LANOUEETTE: I would like a copy of whatever this is
9 sent to me.

10 MS. TUMINARO: Certainly. I will send it right now, and I
11 can -- I can upload it as well to the -- to the SharePoint.

12 Let me just -- I think I may be done. Can I just take one
13 brief moment --

14 JUDGE SANDRON: Yes.

15 MS. TUMINARO: -- off the record?

16 MS. TUMINARO: Is there any -- Ms. Lanouette, other
17 counsel, do you feel we need any more explanation about the
18 documents of the various portions of the document?

19 MS. LANOUEETTE: No. No, Your Honor.

20 JUDGE SANDRON: Because I think they speak for themselves
21 basically.

22 MS. LANOUEETTE: Right.

23 MS. TUMINARO: Agree. And I have nothing further for this
24 witness, Your Honor. I will -- if we could go off the record
25 for one minute, I'll send it to Ms. Lanouette right now.

1 JUDGE SANDRON: All right.

2 MS. LANOUEETTE: You don't have to send them to me now. I
3 just want a copy.

4 MS. TUMINARO: Sure. Sure. And I will upload it to the
5 SharePoint. It'll only take a minute, but I will just -- be
6 hard for me to listen and pay attention at the same --

7 JUDGE SANDRON: All right. Before you do that, are there
8 any objections to the document?

9 MS. LANOUEETTE: No.

10 JUDGE SANDRON: All right.

11 MS. LANOUEETTE: No objection.

12 JUDGE SANDRON: Union Exhibit 3 is received.

13 **(Union Exhibit Number 3 Received into Evidence)**

14 JUDGE SANDRON: Now, Ms. Tuminaro, if you want to go ahead
15 and send it, just make --

16 MS. TUMINARO: I will do that. Thank you very much.
17 Before I forget, if we could just pause for one moment?

18 JUDGE SANDRON: Yes. We'll stay on and just wait till you
19 do that then.

20 I think we'll wait till Ms. Tuminaro gets done, but I
21 think she raised one question maybe we should clarify.

22 Ms. Lanouette, will you be able to see when you get it --
23 will you be able to -- when she sends it, will you be able to
24 see immediately?

25 MS. LANOUEETTE: I'm fine, Your Honor. I don't think we

1 need to wait.

2 JUDGE SANDRON: All right.

3 MS. LANOUEITE: I just want a copy so that I know which
4 pages were included when it comes time to write brief.

5 JUDGE SANDRON: All right. Right. We'll have to get the
6 format for getting it into the record. Yeah, I don't think
7 we --

8 Ms. Tuminaro, I think we'll just go forward, because --

9 MS. LANOUEITE: I think we're going to need time to do
10 that with many exhibits.

11 JUDGE SANDRON: All right. But why don't we just --

12 Ms. Tuminaro, I think we'll just hold off on that if
13 you're not able --

14 MS. LANOUEITE: That's fine. Thank you.

15 MS. TUMINARO: Sure. I'll hit send in just a moment, but
16 we can go forward.

17 JUDGE SANDRON: One thing I just want to add. One thing,
18 going back to that document. I think you indicated maybe we
19 should just tie this up. You said there was one discipline
20 that was not clear. Or are they --

21 MS. TUMINARO: Oh.

22 JUDGE SANDRON: -- all clear, because you said they're
23 verbal --

24 MS. TUMINARO: Thank you.

25 JUDGE SANDRON: Yeah. There was --

1 MS. TUMINARO: Yes.

2 JUDGE SANDRON: -- one you said. Maybe we can get that
3 one.

4 MS. TUMINARO: Sure. Let me pull it up. Hang on one
5 second.

6 JUDGE SANDRON: Because the others appear to be clear on
7 their face, but maybe we should just make sure we know what
8 that one was, if we can. If not, we'll have to leave it
9 indeterminate.

10 MS. TUMINARO: Okay. Okay. This document -- I think this
11 is the only one -- is marked -- I need the bottom of the page.

12 JUDGE SANDRON: Is that --

13 MS. TUMINARO: Hold on.

14 JUDGE SANDRON: -- page 8, I think?

15 MS. TUMINARO: Yes. Page 8.

16 JUDGE SANDRON: Page 8. Maybe the witness -- and I don't
17 know if she can --

18 Is there anything on this document that shows you what the
19 nature of the discipline was?

20 THE WITNESS: No. There's nothing checked on that.

21 JUDGE SANDRON: All right. So we'll just have to say
22 that's unclear. Okay.

23 MS. TUMINARO: Can I just ask one follow-up question,
24 Judge?

25 JUDGE SANDRON: Yes.

1 Q BY MS. TUMINARO: It's correct, however, that this LPN at
2 issue on page 8 of 18 was not terminated for the conduct
3 contained in this disciplinary report, correct?

4 A No.

5 Q Okay. Thank you. Nothing further?

6 JUDGE SANDRON: Okay. Ms. Joslin?

7 MS. JOSLIN: Yes, Your Honor. Thank you.

8 **CROSS-EXAMINATION**

9 Q BY MS. JOSLIN: Ms. Carchidi, my name is Lisa Joslin, and
10 I represent Tara Golden in this matter. I just have a few
11 questions about her specifically.

12 Now, you mentioned earlier that you were not involved in
13 the decision to fire Ms. Golden; is that correct?

14 A Correct.

15 Q Do you know who made that decision?

16 A That would have been Patrick and corporate, I guess. I --

17 JUDGE SANDRON: Well, you don't have to guess --

18 MS. JOSLIN: Please don't guess.

19 THE WITNESS: Okay. Yeah.

20 JUDGE SANDRON: -- if you don't know.

21 A Patrick.

22 Q BY MS. JOSLIN: Patrick in corporate. Who's corporate?
23 Who do you mean by that?

24 A Well, the -- our bosses.

25 Q Who are they, please?

1 A There is Mary Pat, who's my direct boss, and then I think
2 Seth Rinn is a regional administrative boss.

3 Q And Mary Pat, is it Mary Pat Carhart?

4 A It is Mary Pat Carhart. Sorry.

5 Q Okay. Thank you. Any other members of corporate you're
6 referencing?

7 A There's Dave Camerota. Camerota. Camerota.

8 Q Do you know if Mr. Camerota had any input or decision role
9 in firing Ms. Golden?

10 A I don't.

11 Q Okay. All right. How -- when did you first learn Ms.
12 Golden was going to be fired?

13 A The day it happened.

14 Q And how did you find out?

15 A Patrick told me.

16 Q What did he say?

17 A He said she was going to be terminated.

18 Q Did you ask him why?

19 A No.

20 Q So he told you she was going to be terminated, and nothing
21 else occurred in that conversation?

22 A Well, I mean, I wasn't completely blind to some of the
23 things that were going on.

24 Q Did you -- did you -- well, tell me about that
25 conversation, as much as you can remember about it.

1 A Well, I remember that I had agreed, because she just
2 wasn't -- she wasn't able to perform as a -- as the unit
3 manager. She was having issues and problems.

4 Q And that's why --

5 MS. JOSLIN: Well, withdrawn.

6 Q BY MS. JOSLIN: Do you know why she was fired?

7 A Because of her inability to perform as a unit manager.

8 Q Did Mr. Weir tell you that?

9 A That's what I -- yes. Yes, he did.

10 Q Did he tell you in that meeting where you first learned
11 she was going to be fired?

12 A No. I had known that beforehand. I had had conversations
13 with her prior to this about her inability to transition into
14 this.

15 Q Okay. Let me be more specific in my -- in my question.

16 A Okay.

17 Q I may be confusing you, and I apologize. I'm going to
18 focus you, just your -- this question solely on the meeting you
19 had with Mr. Weir where you learned that she was going to be
20 fired, okay?

21 A Okay. Okay.

22 Q Yes. So in that meeting, did Mr. Weir specifically tell
23 you that she was going to be fired because she failed to
24 perform the functions of a unit manager?

25 A Yes.

1 Q Okay. Did he mention any other reason for her being
2 fired?

3 A Not to me, no.

4 Q Okay. Are you aware of any other reasons for her firing
5 from another source?

6 A No.

7 Q Okay. Did you talk to anyone else about her being fired?

8 A No.

9 Q Did you ever state to Mr. Weir or any member of corporate
10 that -- that perhaps it would be a good idea for Tara Golden to
11 be demoted rather than fired?

12 A I did not.

13 Q Okay. Did you hold that opinion at any point in time in
14 fall of 2019, that it may be better to demote her rather than
15 terminate her?

16 A I did not.

17 Q Okay. Why is that?

18 A Quite honestly, I was very new to my position, and I
19 also -- yes. I was very new to my position. I was still
20 learning what I was doing.

21 Q So you didn't feel like you could suggest that she be
22 demoted back to a nursing position?

23 A No, I felt like I could suggest anything.

24 Q Okay. But you didn't do it, right?

25 A I did not, no.

1 Q Okay. And why -- why didn't you?

2 A Because I believed that things had gone far enough with
3 her.

4 Q Okay. And by what -- what do you mean by that?

5 A That if she had gone back to a nursing position, it wasn't
6 going to change how she was behaving and how she was acting at
7 that point. She -- it's hard to explain.

8 Q How was she acting that caused you this concern?

9 A She was -- you could see a lot of times she was visibly
10 upset.

11 Q Wasn't she -- well, you testified that she was upset
12 because she was in a new role and had trouble transitioning,
13 right?

14 A She was having trouble transitioning, yeah.

15 Q And that's why you said she was upset, right?

16 A That was part of it, yes.

17 Q Why else was she upset, to your knowledge?

18 A Well, she was upset because, again, I said before, she had
19 a vision of how she wanted things to be, and it wasn't coming
20 to -- to life for her. I think there was all kind -- I -- I
21 don't know how she was feeling, but from an outside
22 perspective, she -- it wasn't what she wanted it to be.

23 Q Isn't it true that Ms. Golden wanted to better the
24 environment for her staff?

25 A She -- she did, yeah. She had a vision of it.

1 Q Okay. And if -- and if she was upset that she couldn't
2 affect that vision quickly enough, you don't think that would
3 translate into a pretty capable nurse? I mean, you thought
4 that --

5 JUDGE SANDRON: All right. Yeah. I don't think, you
6 know, I think you're --

7 MS. JOSLIN: It's cross, Your Honor.

8 JUDGE SANDRON: I understand, but it's getting --

9 MS. JOSLIN: Too argumentative?

10 JUDGE SANDRON: Yeah.

11 MS. JOSLIN: Okay, Your Honor.

12 JUDGE SANDRON: Getting into that territory. It's
13 crossing over.

14 MS. JOSLIN: Okay. That's fine. Sorry, Your Honor.

15 Q BY MS. JOSLIN: Is there any other reason that you didn't
16 think she should be demoted back to a nursing position?

17 A No. Nothing I can think of.

18 Q Were you involved in the disciplinary action of Lori
19 George in May of 2020?

20 A Yes, I was.

21 Q Okay. And just so I understand it. She was demoted, not
22 fired; is that right?

23 A Correct.

24 Q And she was demoted based on a circumstance where one of
25 her neighbors was locked in a bathroom for almost four hours;

1 is that right?

2 A Correct.

3 Q And why did you think it would be okay to demote her to a
4 nursing position rather than fire her?

5 A She was a supervisor, and it was a single really bad
6 judgment event that she did this.

7 Q Okay. And you didn't think that warranted termination,
8 right?

9 A She was suspended, and then she was demoted.

10 Q But it didn't warrant termination, her problem?

11 A No.

12 Q Okay. And were you involved in Stacey Finch's demotion
13 in -- I think you said it was late 2020?

14 A It was, yes.

15 Q Okay. So were you involved in that decision?

16 A I was.

17 Q Okay. And you didn't feel that she should be fired,
18 right?

19 A I -- I talked it up, to tell you the truth.

20 Q Talked it up to whom?

21 A In my -- in myself. I thought about it.

22 Q Okay. And --

23 A Because -- sorry.

24 Q Go ahead.

25 A Because -- and if -- if this event had occurred out in the

1 hallway, where -- with other people -- yes, she would have been
2 terminated.

3 Q Where did the verbal explosion occur?

4 A It occurred just outside the -- just outside the door of
5 the administrative conference room, which is behind closed
6 doors, so --

7 Q I believe you testified that it continued. She left the
8 room, and it -- her explosion continued.

9 A And then she went into the café.

10 Q Right.

11 A Which is also behind closed doors.

12 Q Okay.

13 A Yeah. No neighbors were there. We have no patients in
14 those areas.

15 MS. JOSLIN: That's all I have, Your Honor. Thank you.

16 JUDGE SANDRON: Redirect?

17 MS. LANOUE: No, Your Honor.

18 JUDGE SANDRON: All right. Thank you. Your testimony is
19 over. Thank you for your time.

20 Okay. While we're waiting for the witness, at a certain
21 point we have to make sure, before we close the hearing, either
22 today or tomorrow, maybe, or whenever we do, that the court
23 reporter, you know, make sure all the documents are in order,
24 and we have all the ones that have been admitted, that there's
25 no question of documents in the record.

1 MS. LANOUEETTE: I'm going to need a day or two to get --
2 make sure that all those paginations and the things like that
3 are done. I mean, I can't do it today or tomorrow.

4 JUDGE SANDRON: Well, are -- I guess one question is, are
5 we going to finish tomorrow if -- you know, I'm going to -- are
6 we going to finish the trial tomorrow? That's -- we'll have to
7 see. If not, we'll have to think about reset dates, and that
8 might moot out the issue of getting the documents in proper
9 format, but --

10 Do you -- you foresee, Ms. Lanouette, you'll finish by
11 tomorrow?

12 MS. LANOUEETTE: Absolutely, Your Honor. I --

13 JUDGE SANDRON: All right.

14 MS. LANOUEETTE: -- have one to two more witnesses today,
15 and then, depending on if we get the second witness in today,
16 that person could testify first thing tomorrow and one other
17 witness. I don't anticipate --

18 JUDGE SANDRON: All right.

19 MS. LANOUEETTE: -- any of them being all that long, at
20 least on direct.

21 JUDGE SANDRON: Well, maybe we should ask the court
22 reporter to just, on this, if we leave the record open for the
23 receipt -- does that make it -- how complicated does that get
24 for you?

25 THE COURT REPORTER: I would just actually ask the court

1 reporting firm, because I'm subcontracted, so they -- I hand
2 this all off, so they all -- they deal with that. So I would
3 have to ask them, but I can get back to you on that.

4 JUDGE SANDRON: Yeah. Well, maybe you can find that out
5 today, how that can be handled.

6 THE COURT REPORTER: Because I know they're up against --
7 I know they're up against a time window with these transcripts,
8 and the exhibits have to be turned in with the transcripts --

9 JUDGE SANDRON: Well, the only thing is if the record --
10 if I don't close the record --

11 THE COURT REPORTER: Right.

12 JUDGE SANDRON: -- until -- if I set a date that those
13 documents must be furnished, and then close or issue an order
14 closing the record, then that would start the transcript time,
15 right, and the exhibits time?

16 THE COURT REPORTER: I believe --

17 JUDGE SANDRON: Because if we don't close. Yeah. So that
18 may be the way to handle that, if we could discuss that
19 tomorrow.

20 THE COURT REPORTER: Okay.

21 JUDGE SANDRON: But yeah, I think that'd be the way we can
22 do it. I think keep the record open on the -- I mean to keep
23 the record open when we're on the record, and then close it
24 once the documents are in. Okay.

25 THE COURT REPORTER: Okay.

1 JUDGE SANDRON: I think we have the next witness. I think
2 he was here.

3 Oh, there you are. Hi. I'm going to swear you in, so if
4 you can raise your right hand.

5 Whereupon,

6 **JOSIE CRUZ**

7 having been duly sworn, was called as a witness herein and was
8 examined and testified as follows:

9 JUDGE SANDRON: And you can lower your hand. If you could
10 state and spell your full and correct legal name and provide us
11 with an address, either home or work?

12 THE WITNESS: Josie Cruz, J-O-S-I-E C-R-U-Z. Address is 16
13 Thomas Street, Kingston, New York 12401, Apartment 4-C.

14 MS. LANOUEETTE: Okay.

15 JUDGE SANDRON: Okay. Thank you.

16 **DIRECT EXAMINATION**

17 Q BY MS. LANOUEETTE: Good af -- good afternoon, Ms. -- Ms.
18 Cruz. Where are you employed?

19 A At the Northeast Center in Lake Katrine, New York.

20 Q And what is your position at the Northeast Center?

21 A I'm a -- a community specialist service supervisor.

22 Q What shift do you work?

23 A Night shift. It's 11 to 7 a.m.

24 Q How long have you been a community support super -- I'm
25 going to use the acronym CSS -- supervisor on the 11 p.m. to 7

1 a.m. shift?

2 A On that shift specifically or at the whole here, it's been
3 ten years.

4 Q On your -- okay. You've been at Northeast Center for ten
5 years; is that right?

6 A Yes.

7 Q Okay. What -- what position did you start in at Northeast
8 Center?

9 A CSS.

10 Q Okay. And when were you promoted to CSS supervisor?

11 A Around 2014 I was promoted for day shift.

12 Q And when did you move from day shift to night shift?

13 A Within a year or so of having that title.

14 Q Who is Anita Rogers?

15 A She is opposite me. She's also a supervisor.

16 Q In 2019, what was Ms. Rogers' position?

17 A She was also -- I mean, I don't know what -- what -- at
18 what point she became a shift leader. She was CSS prior to
19 that.

20 Q What are the responsibilities of the CSS supervisor?

21 A To oversee the incoming staff, to place them on their job
22 assignments, to assure neighbor safety in the building.

23 Q What, if any, do CSS supervisors have in scheduling staff?

24 A We would place the staff, you know, scheduling them. Such
25 as putting them on assignments, you know, daily. So then we

1 would put them on a CVO one-on-one or -- you know, we would
2 fill the jobs as needed when they came in.

3 Q Let me ask you. How do you know who is going to work on
4 the night shift?

5 A There's a pre-made schedule already done as far as what
6 staff I'll have.

7 Q Okay. And if there are holes in that schedule, what is
8 the role of the CSS supervisor?

9 A I will find someone from a previous shift to possibly stay
10 the night, or I can call someone from my roster of employees
11 who are -- you know, if I'm so short, I can call my boss and
12 say, you know, how short I am too, to fill the position.

13 Q How often when you were a CSS supervisor in 2019 did you
14 need to call people in or ask people to stay?

15 A I would say on a weekly basis. It happens every week.
16 Every weekend we were short. I would need people to fill in.

17 Q Okay. And if a staff member staying or coming in resulted
18 in overtime, how did that process work?

19 A As far as them -- they would be on shift and I would, you
20 know, put them on for their overtime. I mean, my boss would
21 tell me, you know, if they worked too much that week or
22 something, then maybe that person couldn't stay for me. I
23 knew, you know, who could and could not stay. Basically
24 (Indiscernible, simultaneous speech) -- usually tell me, like,
25 on Friday, this person, you know, has worked more than 40

1 hours, you know, or something overtime and they can't stay, so.
2 My boss would communicate to me.

3 Q Other than if somebody had worked too much overtime by
4 Friday, could you approve overtime for your shift?

5 A Absolutely, yes.

6 Q And did you have to call your boss or -- or the night --
7 night nursing supervisor to -- to approve that overtime?

8 A No. No, not if I was short. I -- I needed someone, I
9 didn't have to get it approved, no. Whoever was willing to
10 stay, I could sign off.

11 Q Was that true even if they had already worked a lot of
12 overtime?

13 A No, it's not -- if I -- if they worked too much, then I
14 couldn't schedule them.

15 Q That was only if Mr. DeAbreu let you know somebody had
16 worked too much?

17 A Correct.

18 Q Once you start a shift, if you do -- I think you said you
19 -- you -- you used the word schedule people for their job --

20 A Right. That's fine.

21 Q -- what are the positions that you need to assign?

22 A I have a lock (audio interference) unit that I need
23 someone there. I have --

24 Q I'm sorry, Ms. -- I'm sorry, the answer got gar --

25 garbled. I heard you say you have a locked unit but then the -

1 - the sound cut out.

2 A Yes. I need a CSS worker there. Can you hear me? All
3 right. I also need someone for the front desk to answer the
4 phones at night. We possibly have up to, let's say, four or
5 five CVOs, for close visual observation. I will assign them
6 there. I also have a 15-minute check person that goes around
7 the building to check everyone every 15 minutes. And then also
8 a break person to give them -- the staff their lunches.

9 Q I'm going to show you what has been marked as Respondent's
10 Exhibit -- or I'm sorry, what is in evidence as Respondent's
11 Exhibit 44. And ask if you recognize this -- this document.

12 A Yes, I fill that out every night.

13 Q You fill this out -- when -- in 2019, who was the other
14 CSS supervisor on night shift?

15 A It was me and Josh.

16 Q And in 2019, did you fill out this form every night you
17 worked?

18 A When I did -- yes. Well, sometimes Josh was shift lead.
19 We would make the decision based on him already being at work.
20 Sometimes, he would be there before me. And he would decide to
21 shift lead, even when I was there.

22 JUDGE SANDRON: Who -- was there any -- was there any
23 difference in your roles -- your role and his role?

24 THE WITNESS: I feel we were just as responsible, you
25 know, for staff. And I looked at him as supervisor as well. I

1 don't feel our roles were different, no.

2 JUDGE SANDRON: When -- when you were both -- when you
3 were both there, would you say that you were ba -- more in
4 charge than he was or the same?

5 THE WITNESS: About the same. I mean, I -- if he saw
6 something wrong about staff, he would -- you know, we would
7 talk about it. He would -- you know, we would decide if it was
8 a write-up or -- any situation that we would confront, we'd
9 make those decisions together.

10 JUDGE SANDRON: Okay. Thank you.

11 Q BY MS. LANOUE: On the first page in front of you, is
12 this a night that you worked?

13 A It looks like I was scheduled to the front desk.

14 Q Who made the decision you would work on the front desk?

15 A It looks like Josh made the schedule that day because his
16 name is on top. So he made the decision that I would come into
17 the front desk.

18 JUDGE SANDRON: And -- and -- and when you were there --
19 when you were in the same position as far as being on -- on
20 duty and making the schedule, you would do the same thing as
21 far as him, where he would go?

22 THE WITNESS: Yes, absolutely. And -- and it just based
23 on what worked better for us that day. You know, I -- I was
24 better at the phones and knowing what's going on, and he was,
25 you know, that day walking the floor and you know, attending to

1 the units.

2 JUDGE SANDRON: I see.

3 Q BY MS. LANOUEETTE: What did you consider in making
4 assignments to the NBI unit?

5 A Well, I want to make sure that the person's responsible
6 enough to handle the behaviors up there. Pretty much, I mean,
7 anyone on our night shift can do that.

8 Q What do you mean by the behaviors up there?

9 A The reason that there is a locked unit is because maybe
10 they're a little -- their brain injuries are a little bit more
11 severe. A lot of them don't know their names or -- you know,
12 they may think they don't belong up there and want to get out
13 or -- so behaviors, you know, for the neighbors, maybe they
14 don't know what room they belong to and we're guiding them
15 there, you know, or -- they may get violent because they
16 disagree with what you're -- you're telling them that's their
17 room and they're -- they're debating that.

18 Q What considerations do you use in making assignments to
19 the CVOs?

20 A If they have a good rapport with a neighbor, I do consider
21 that. If they get along very well with them and you know,
22 they -- they -- they're able to may -- maybe better work
23 with -- with the patient. Well, I do consider rapport.

24 Q What do you consider in making assignments to the -- the
25 front desk?

1 A If they know how to use the phone, you know, if they can
2 speak well and -- and communicate well.

3 Q Does the person assigned to the front desk, your podium,
4 also have to be able to interact with the neighbors?

5 A Yes. Yes.

6 Q And what would be a situation where CSS might get involved
7 at the front desk with the neighbor?

8 A If a neighbor is trying to leave the building
9 (indiscernible) neighbor, may need to maybe have a rapport with
10 that person up front as well. Or we can maybe talk them back
11 into the building. Sometimes that's a lot of times what we
12 face at the front door.

13 JUDGE SANDRON: Does -- does that happen often where --
14 where a patient tries to leave?

15 THE WITNESS: Often enough that we're there, yes.

16 JUDGE SANDRON: About how often would you say it occurs,
17 you know, on -- on the average? Just give us an idea.

18 THE WITNESS: I mean, I would say throughout the year, I
19 mean, maybe five, six, seven times. I -- you know, I don't
20 have a --

21 JUDGE SANDRON: I see.

22 THE WITNESS: -- an actual -- depends on the neighbors
23 that we are -- that we have.

24 JUDGE SANDRON: But it -- but it does -- it -- it does
25 occur periodically?

1 THE WITNESS: Yes. Yes

2 JUDGE SANDRON: Thank you.

3 THE WITNESS: At least once or twice a year I'm -- I'm,
4 you know, holding someone back from -- from leaving.

5 Q BY MS. LANOUE: What do you consider in the 15-minute
6 check?

7 A Make sure that they can walk well. You know, that they
8 don't have any leg injuries that day, the staff, as far as
9 their ankles or their knees hurting or any complaints they may
10 have about being on their feet all day.

11 Q If someone is a -- stays over, maybe worked a 3 to 11 and
12 then stays to work the 11 to -- to 7, what consideration do you
13 give that in assigning them work?

14 A I mean, I would rather them sit down possibly on a visual
15 and not have them walking. You know, they're doing me a favor
16 by staying, so I'm going to try and give them the easier job.

17 Q Would you assign inexperienced CSS workers to NBI?

18 A Inexperienced?

19 Q Yes.

20 A No. Absolutely --

21 Q Why not?

22 A -- not. No.

23 Q Why not?

24 A Because they really need the experience of -- of knowing
25 different behaviors. You know, knowing different people and --

1 no, I -- I would not. And it takes about -- I mean, for me to
2 place a new staff there, I have to see the responsibility on
3 the floor for at least 30 days before I place them up on the
4 locked unit. I myself have to feel comfortable that they're
5 going to handle, you know, a situation.

6 JUDGE SANDRON: So are you -- are you the person who would
7 make the determination of whether someone is qualified to work
8 on that unit?

9 THE WITNESS: I mean, hiring would be --

10 JUDGE SANDRON: No, I mean, when -- when a CSS is -- a
11 CSS -- never say that wrong, CS is hired, and they're assigned
12 to work under you, are you the one who determines whether
13 they're qualified for certain positions? You or the other CSS?

14 THE WITNESS: I would refer more to the director as far as
15 their qualifications. If he feels they shouldn't place someone
16 somewhere, you know, I've been told, maybe this person doesn't
17 work well with this -- you know, in this scenario. So no, I'm
18 not the ultimate decision-maker. But as far as my shift go --
19 goes, I decide then.

20 JUDGE SANDRON: Okay.

21 Q BY MS. LANOUE: So when you say you would want to see
22 somebody work for 30 days before you would put them on -- on
23 the N -- NBI unit, that -- that's a decision you are making?

24 A Not only myself. I mean, the team says that as well. I
25 don't know if it's written in stone and policy but since I've

1 worked here ten years, from the beginning, even myself when I
2 was placed on that unit, I had to wait a period of time to kind
3 of show that I can work on the floor and do all the jobs and
4 that I'm responsible enough to be up there. I think that goes
5 to anyone that starts here.

6 JUDGE SANDRON: Have you ever determined if someone you
7 place in the NBI is -- was not able to do that kind of work and
8 would -- would not be assigned there again? Has that ever come
9 up?

10 THE WITNESS: It does come up, yes.

11 JUDGE SANDRON: So you've -- you've taken some people out
12 of rotation for the NBI?

13 THE WITNESS: I mean, I -- we kind of work with them to
14 let them grow, the person, and maybe they get to get better at
15 it. I have tested people and decided myself not to put them
16 back up there after an experience with them. You know, maybe
17 they're not checking on everyone like they should.

18 JUDGE SANDRON: Okay, thank you.

19 Do you want to take the document down? I don't think we
20 need it.

21 MS. LANOUE: Oh, I'm sorry.

22 JUDGE SANDRON: Oh, that's all right. I think it's --

23 MS. LANOUE: I was just -- yes.

24 Q BY MS. LANOUE: Why do you consider the things that you
25 told us about, rapport with the patients, whether they can

1 handle NBI, whether they can work with the phones, in -- in
2 making your assignments?

3 A Right. To make the night go smoother and you know, so we
4 can all have a -- a pleasant night at work, you know.

5 Q In making your assignments, do you also attempt to rotate
6 staff to -- to various positions?

7 A Yes.

8 Q Why do --

9 A I want --

10 Q -- you do that?

11 A -- all to get the -- the experience. So I can see who's
12 good at what. So I can, you know, know who's going to work
13 well with a neighbor or -- or the job. Maybe -- you know,
14 definitely rotation, we do that.

15 Q If you see a CSS worker has been on a difficult assignment
16 for several nights, what -- what else would you consider?

17 A As far -- I mean, we try not to schedule the same
18 assignments over and over unless that person reque -- you know,
19 that they want to be on that assignment. Sometimes some people
20 like to be up all day and you know, on their feet and -- and
21 like to be on the go, so. Right. It just really depends on --
22 on the person that day, what -- what I consider about assigning
23 them.

24 Q Do you consider gender in making assignments?

25 A Not necessarily, no. If they can handle it upstairs,

1 if -- they'll go too.

2 Q What if you have a CVO that requests a -- I'm sorry, go
3 ahead.

4 A Right. If I have a CVO or something like that, then --
5 that's a female, I'd much rather have possibly a female with
6 that person if their behavior is that they're promiscuous with
7 a male or something like that, then I do consider their role
8 depending on their care plan.

9 JUDGE SANDRON: Can you -- do you ever have occasion to
10 give someone an assignment that they don't want, because you
11 said sometimes people want certain assignments? Do you ever
12 have occasion to have to assign someone to a particular
13 position they don't want?

14 THE WITNESS: Absolutely, yes. There is several difficult
15 patients here that we, you know, deal with on a nightly basis,
16 and you know, those jobs are a little bit rougher because
17 they're up, and we need to attend to them, so yeah. They may
18 not want to do that that night.

19 JUDGE SANDRON: And -- but -- but then you -- you
20 sometimes have to give that to them anyway?

21 THE WITNESS: Yes. Sometimes they have no choice.
22 They -- they chose to work there.

23 JUDGE SANDRON: Okay. Thank you.

24 Q BY MS. LANOUE: Ms. Cruz, you mentioned care plan. In
25 your assignments, do you consider the -- the care plans in

1 the -- of the neighbors?

2 A Of course, upmost. That's what we look at first is the
3 care plan to assign them. If it says no male staff to that
4 neighbor, then I have to follow what it says, yes.

5 Q And --

6 A And every neighbor that we sit with has a care plan.

7 Q Other than gender, what other information might affect
8 your assignments in a care plan?

9 A If you're sitting inside the room or outside the room,
10 that is also dictated by the care plan. You know, if we're
11 checking, you know, their room before we -- they walk in their
12 room or -- you know, maybe their schedule is on there as far
13 as, you know, when they can do certain things, as far as when
14 they can shower or when they can go to classes, things like
15 that.

16 Q And how would that influence who you assign to that
17 particular neighbor?

18 A Not really an influence. I -- I would like them to get
19 along, and I would like it the -- I would like our staff to get
20 along well with (audio interference).

21 Q Approximately how long does it take you to make
22 assignments each night?

23 A About half hour as well before I turn in my break sheet
24 over to the nursing supervisor and so she knows what our census
25 is that night. I fill it out based on -- you know, where I'm

1 getting a callout that night, then I eliminate a person off the
2 schedule. If someone's late, I'd have to wait to make the
3 schedule to, you know, fill it in to see what else we're going
4 to do. And then I discuss it with the nursing supervisor, the
5 break sheet, as far as who is where and how many people we
6 have --

7 Q Okay.

8 A -- for the night shift. For about a half hour as well.

9 Q Have you ever had to make adjustments to the schedule
10 after you've made assignments?

11 A Yes.

12 Q For what reasons would you need to make adjustments?

13 A A person doesn't -- no call/no show or something, you
14 know, so I just don't have them, and I have to pull
15 somewhere -- from somewhere else that day. You know, or if
16 maybe I don't have enough staff, I'll -- I'll have someone
17 watch two people or -- you know, I'll make adjustments or I'll
18 put on them on checks or something.

19 Q Have you ever had to make an adjustment because a CSS
20 worker and neighbor didn't work out?

21 A Yes. Yes.

22 Q Could you give us an example of that?

23 A So let's say a neighbor had a rainbow with a -- with a CVO
24 or something and -- and they got violent. So I felt that it
25 was my benefit to swap off the -- the person that was with them

1 because they had a rainbow, and it was a violent act towards
2 that person. So I did switch them off. And that has happened
3 several times. Different situations.

4 Q On the assignment sheet, do -- the -- that you fill out,
5 do you know what TS means?

6 A Therapeutic support. In that shift -- like and extra
7 person that we may have, if we have, you know, a surplus of
8 people, let's say, I will put them on therapeutic support to
9 kind of walk the building and -- you know, if there's any
10 neighbors that need attending to or you know, anything's going
11 on, they can talk to them for -- you know, spend time with
12 them.

13 Q When you are supervising, do you -- and you haven't got
14 the staff to cover all the positions, do you put yourself on
15 therapeutic support?

16 A Yes, I would.

17 Q Okay.

18 A Just to have an assignment, yes, that's (audio
19 interference).

20 Q Now, once the shift has begun and assignments are done,
21 what do you do to supervise your staff?

22 A I attend to them. I go to them to see what time their
23 breaks are. I go to them to see if they need any type of
24 paperwork. Like, you know, if they want to work an extra
25 shift, if they want to, you know, fill in for PTO, I -- I visit

1 them every hour just to kind of check on them and make sure
2 that they're doing good with the CVO that they're placed. I
3 give them the breaks and -- you know, just attend to the night
4 shift to make sure that everybody's having a good day.

5 Q Do you also check documentation?

6 A Yes. I make sure that they're filled, and I pick them up
7 in the morning. Around 6:30 in the morning before the shift
8 ends, everyone knows to have their papers filled and done. And
9 I do collect them for morning as well.

10 Q I'm going to show you what's been marked as Respondent's
11 R-46. And ask if you recognize this document? I'll try to
12 make it more centered. Forgetting the writing that's on it, do
13 you recognize the document?

14 A Of course, yes.

15 Q And what is this document?

16 A It's our increased supervision of our neighbors that we're
17 checking every 15 minutes and the units that they're on.

18 Q And who was the employee who was checking -- doing the 15-
19 minute checks?

20 A It looks like Sherice McBean is on there.

21 JUDGE SANDRON: Could you spell her name? I don't know if
22 we have that.

23 THE WITNESS: Sherice?

24 JUDGE SANDRON: Yes.

25 THE WITNESS: S-H-E-R-I-C-E.

1 JUDGE SANDRON: And her last name?

2 THE WITNESS: McBean, M-C-B-E-A-N.

3 JUDGE SANDRON: Thank you.

4 Q BY MS. LANOUEETTE: And -- how do you as a supervisor --
5 what is your role with regard to Exhibit R-46?

6 A As far as I would take their board, let's say, for their
7 breaks, and usually I cover their half hour breaks on the
8 board. And I would make sure that it's being filled properly
9 throughout the night, so. You know, once I take the board, I
10 expect that the board is filled out correctly. And I initial
11 it for their half hour break. It doesn't look like she got --
12 did she get a half hour -- it doesn't look like she ever got a
13 break this time. No one else filled this out. Usually they
14 get half hour.

15 Q All right.

16 MS. LANOUEETTE: Your Honor, we -- we would offer R-46 for
17 purposes of demonstrating what the document looks like.

18 JUDGE SANDRON: So it's for illustrative purposes?

19 MS. LANOUEETTE: It is.

20 JUDGE SANDRON: Any -- any voir dire or objections? The
21 document is received.

22 **(Respondent Exhibit Number 46 Received into Evidence)**

23 Q BY MS. LANOUEETTE: When you are supervising employees,
24 what do you do if you come across a problem?

25 A As far as staff or neighbors?

1 Q Staff.

2 A Staff. If it's a problem regarding a patient, I'm quickly
3 to try and remove them from whatever situation is going on.
4 I'm not sure of the question.

5 Q Okay. Have you ever found somebody asleep or dozing on
6 their shift?

7 A Yes. If -- if someone does doze off or something and if
8 it's like their first time, you know, I will tap them and you
9 know, say, get up, are you able to stay awake during your
10 assignment. You know, maybe go take a walk, you know, take a
11 break. If you can come back and not fall asleep, then I'll
12 keep you there. If not, then maybe I'll switch you over to
13 walk and have the other person sit down. I want to try and
14 keep you awake throughout the shift. But yeah, there --
15 that -- that happens.

16 Q What happens if you find someone has engaged or it's
17 reported to you they've engaged in something that could be
18 considered abuse?

19 A Right. Then if it's stopped, definitely we look to
20 suspend that person immediately out of the building. So it
21 would be a write-up right then. And with the nursing
22 supervisor, I would have to, you know, explain everything to
23 them first. And it would be a mutual decision. And if it's
24 abuse, the -- they're immediately suspended until investigated.

25 Q What is the -- you said you would write people up if it

1 was a second time. What -- what is the process for -- other
2 than abuse, normal disciplinary infractions, no call/no show?

3 A There is a point system -- there is currently a point
4 system in place where it's 12 points, and you know, we look at
5 possible termination. There's -- the write-up is -- consists
6 of reeducation first. And then there's a verbal warning. And
7 then I believe -- I don't know if termination, I guess, is
8 next, is the third thing. If they're calling out too much,
9 they're written up. After so many points, then, you know, we
10 start reeducating them that, you know, your points are going up
11 and you know -- so they stop calling out or coming in late.
12 But we do follow up with that and follow through.

13 Q Have you ever had to write an employee up for discipline
14 for something?

15 A Yes. Yes.

16 Q Give us an example of what you've written employees up
17 for.

18 A For callouts, for points. I had written them up for that,
19 especially. I have also written people up for falling asleep.
20 And -- and they've been terminated for that reason. You know,
21 throughout the years, I've -- I've written up some -- about --
22 you know, regarding lateness or things of that nature.

23 Q When you write it up, what do you do with that write-up?

24 A Immediately my boss knows, the director. I hand that in
25 to him in the morning, and then we discuss it. And then we

1 meet with that person to, you know, further discipline them
2 or -- if they need to tell their side of what's going on, then,
3 you know, we have a discussion.

4 JUDGE SANDRON: Now, when you -- when you write it up, is
5 that considered final at that point that you then present or --
6 or do you --

7 THE WITNESS: The write-up?

8 JUDGE SANDRON: -- (Indiscernible, simultaneous speech) --
9 right. Before it becomes final, do you have to get it approved
10 or confirmed?

11 THE WITNESS: I'd have to kee -- I have to get it approved
12 by my supervisor, yes. But it is a -- a write-up that will
13 stick. Is that what you're asking?

14 Q BY MS. LANOUE: What do you mean by it will stick?

15 A I mean, it's something that it's legit. I signed it. I
16 will, you know -- it's something that happened, it doesn't just
17 get tossed, you know.

18 Q What, if any, role does Mr. DeAbreu have other than formal
19 approval of the discipline?

20 JUDGE SANDRON: All right. Well, I think --
21 (Indiscernible, simultaneous speech) --

22 THE WITNESS: He can decide to fire.

23 THE COURT REPORTER: Can you adjust your mic, Judge?

24 JUDGE SANDRON: Yes.

25 THE WITNESS: Yes, I couldn't hear you before.

1 JUDGE SANDRON: I'll move this again. I've got to get
2 through here.

3 THE COURT REPORTER: Thank you.

4 JUDGE SANDRON: Is this better?

5 Is -- you've -- so would it be accurate to say you
6 recommend that certain disciplines be taken?

7 THE WITNESS: Yes.

8 JUDGE SANDRON: And does he -- how often would you say he
9 accepts the discipline that you have recommended? Do -- how
10 often will you say that he accepts it as you wrote it up?

11 THE WITNESS: I feel that it's very accepting. I feel
12 that, you know, he follows through in whatever reprimand he
13 needs to do with the staff.

14 JUDGE SANDRON: And he -- so did -- did you understand my
15 question? Do -- does he -- would you say he routinely follows
16 what you have recommended, or does he sometimes disagree and
17 impose lesser or more discipline?

18 THE WITNESS: He sometimes disagrees. You know, sometimes
19 the employee, I may not want them to stay and sometimes they do
20 stay. So I have no say in that. So he does tend sometimes to
21 disagree.

22 JUDGE SANDRON: Okay. But -- now, as best -- I know it's
23 sometimes difficult to estimate, but what -- about what percent
24 of disciplines where you recommend something, does he accept
25 what you -- you know, what you have recommended, you know, in

1 general --

2 THE WITNESS: I mean, I think --

3 JUDGE SANDRON: -- on an average?

4 THE WITNESS: -- it's not a high -- I feel like it's a
5 high percentage that, you know -- let's say 75 percent of the
6 time he will agree, you know, with what I have to say, if not
7 more. Maybe I'm low-balling it but. You know, he does make
8 his own decision, you know, finally, but he does take what I --
9 I have to say deeply into consideration.

10 JUDGE SANDRON: All right. Thank you.

11 Q BY MS. LANOUEETTE: Do you -- I think you've testified you
12 know Josh -- Joshua Endy?

13 A Well, I know him from the job.

14 Q When the two of you worked together, did one of you take
15 the lead more often than the other?

16 MS. TUMINARO: I'm -- I'm going to object. This has been
17 asked and answered already.

18 JUDGE SANDRON: I think I might have asked something along
19 those lines. But I'll allow Ms. Lanouette to ask that. I'm --
20 I -- I believe I did ask it but --

21 MS. TUMINARO: Okay. That's fine.

22 JUDGE SANDRON: -- if she wants to -- well, we're going to
23 ask the witness.

24 Do you -- do you recall that I asked you that question?

25 THE WITNESS: I mean, yeah, it's a mutual thing between

1 us, I felt, that I answered, right. I mean --

2 JUDGE SANDRON: Yes, I think you did.

3 THE WITNESS: Yes.

4 JUDGE SANDRON: Thank you. That's what I recalled.

5 Q BY MS. LANOUEETTE: How are you evaluated as a CSS
6 supervisor?

7 A By my boss. He will do an evaluation on me. That's right
8 in front of me here. You have the document. And I've been
9 rated as well, so.

10 Q What exhibit are you referring to? Is there a tab with
11 what you're looking at?

12 A R-48. I mean, it's not my own but they do fill those out
13 for me as well.

14 Q And R-48 is an evaluation for -- for Josh -- Joshua Endy;
15 is that right?

16 A Yes.

17 Q Your -- are you evaluated on the same kind of form as R-
18 48?

19 A Yes, ma'am.

20 Q Has Mr. DeAbreu ever disciplined or counseled you as the
21 result of something an employee on your shift has done?

22 A As far as maybe how to handle the situation better, yes.
23 You know, as far as maybe what to say to an employee based on
24 their actions. He has spoken to me, yes.

25 Q Has he ever spoken to you about anything related to

1 employees clocking on your shift?

2 A Absolutely. For breaks -- in and out for breaks. That if
3 they're not clocking in and out for breaks, to please, you
4 know, follow through and tell them, when I'm breaking them,
5 giving their half hour, they should be clocking in and out.
6 But sometimes it doesn't happen, so we do also write-ups for
7 that.

8 Q Was there a specific conversation that you can recall
9 where Mr. DeAbreu spoke to you about that topic?

10 A I feel like it happens monthly with staff not clocking in
11 and out. So it's routinely sent in an email to us, you know,
12 staff is not clocking out, follow through. I feel like that's
13 a -- an open topic.

14 Q And when you say he sends an email to us, who is us?

15 A The shift leaders. So there is two shift leaders per
16 every shift. So he sends it to all of us.

17 JUDGE SANDRON: Why -- why does he want employees to clock
18 out? Could you just basically describe why he wants that?

19 THE WITNESS: If you work over six hours, you're due a
20 half hour lunch. So you have to clock out -- by law, you have
21 to have your lunchtime.

22 JUDGE SANDRON: I see.

23 THE WITNESS: Yes. So they have to clock in and out, and
24 sometimes they stay on the clock even when they're on lunch,
25 because I'm the person that's breaking them.

1 JUDGE SANDRON: I see. And that -- that -- that is
2 against the law as -- as you understand it?

3 THE WITNESS: Well, if they work more than six hours.

4 JUDGE SANDRON: Will they get overtime, is that --

5 THE WITNESS: No, no, no, if they get -- if they don't
6 clock out for their lunches.

7 JUDGE SANDRON: Then they get -- that's counted as work
8 time?

9 THE WITNESS: Well, it's -- if they don't clock out, it is
10 work time.

11 JUDGE SANDRON: Then they have to be paid for that time?

12 THE WITNESS: They're not paid for that time. They
13 have --

14 JUDGE SANDRON: They aren't?

15 THE WITNESS: -- to be off the clock. Right. Right. So
16 we want them off the clock for a half hour so that they can get
17 their -- their -- their lunch that they're due for after
18 working six hours or more.

19 MS. LANOUE: It might be helpful, Your Honor. New York
20 has a strange law that requires any employee who works six
21 hours or more to have a half hour unpaid break.

22 JUDGE SANDRON: Will -- will other counsels accept that
23 representation?

24 Q BY MS. LANOUE: Has Mr. DeAbreu ever counseled you with
25 regard to employees on your shift not completing paperwork?

1 A Yes.

2 Q Do you recall an example of that?

3 A Just most recently I had a 15-minute check paper that I
4 failed to put my initials on when I covered a break. I missed
5 a person. So -- and that I had to correct. The next day I was
6 shown the paper, and I did correct it.

7 Q Has he ever counseled you for an instance where it was the
8 employee who made a mistake rather than just you?

9 A Yes. If their CVO sheets for some reason, their hourly
10 sheets that they, you know, sit with the one-on-ones are not
11 filled out correctly, then I'm to approach my staff to have
12 them fill it out for what happened during their shift.

13 Q Okay. And what -- what do you recall Mr. DeAbreu saying
14 to you?

15 A What they do is that they leave the paperwork in a file in
16 the office, if there's any mistakes on -- on the paperwork. So
17 really the communication is just the folder there with the
18 staff paperwork. And maybe there's a little note on it, have
19 them complete, you know, or whatever is wrong with it. We
20 would look at it and fix it.

21 Q Do you attend supervisor meetings?

22 A Yes.

23 Q How often do you have supervisor meetings?

24 A They've been afar -- a few of them recently because of, I
25 guess, COVID and everything, but they would like to have them

1 about once a month. Yeah. I've probably attempted one this --
2 in the past three or four months.

3 Q What do you discuss at supervisor meetings?

4 A Anything from attendance, pay increase, if we're getting
5 any. You know, any type of -- I don't know. Just basic
6 agenda, I guess, about work and you know, if anything's
7 upcoming and new or -- you know, just --

8 Q Okay. That's all the questions I have.

9 A Okay.

10 JUDGE SANDRON: Ms. Pender, cross-examination.

11 MS. PENDER: Yes, thank you. Just briefly, Your Honor.

12 **CROSS-EXAMINATION**

13 Q BY MS. PENDER: Hi. Good afternoon, Ms. Cruz. My name is
14 Alicia Pender. I'm the attorney for the NLRB here today. I
15 just have a few questions for you. If you can't hear me, just
16 let me know, okay.

17 A Okay.

18 Q Okay. You -- when you were talking earlier about filling
19 out the assignment sheet --

20 A Yes.

21 Q -- you referenced a pre-made schedule. Do you remember
22 that?

23 A It's not a pre-made schedule, it's a schedule of staff
24 that I'm expecting that day. So I already staffed for the
25 whole week how many should be on that day.

1 Q And who makes that schedule?

2 A That would be my director.

3 Q So you don't make employees' schedule telling them what
4 dates to come to work?

5 A No.

6 Q On a night when you were not short-staffed, when there was
7 sufficient staff, could you still approve someone to work
8 overtime?

9 A No.

10 Q You testified that it took about a half hour, 30 minutes,
11 to fill out the assignment sheet?

12 A Correct.

13 Q If everyone is there on time and no one calls out, does it
14 still take that long to do the sheet?

15 A No, maybe like 10, 15 minutes if everyone's on time. But
16 yeah, that's -- usually takes about half hour or so because
17 people are calling in or -- yes.

18 Q And at some point, I think you said, you have to talk over
19 the assignment sheet with the nursing supervisor; is that
20 right?

21 A Yes.

22 Q Why is that?

23 A She needs to know how many CSS are in the building, so she
24 takes a census of it.

25 Q Does she ever -- does the nursing supervisor ever tell you

1 to make adjustments to the assignment sheet?

2 A No, not -- not necessarily, no. Not to me.

3 Q Would she ever say, we have an extra CVO, we need another
4 person?

5 A Yes.

6 Q Then you would --

7 A With that, yes.

8 Q Okay.

9 A Right. And then I would get the person or -- yes.

10 Q You talked about a -- a point system for -- for write-ups
11 and discipline.

12 A Yes.

13 Q If someone approves the number of points that would
14 warrant a suspension, can you, on your own discretion, decide
15 not to follow through with that?

16 A Not to follow through with it?

17 Q Right. If I get enough points where I should be written
18 up, can you decide I'm not going to write her up?

19 A I would -- can I decide? I guess I can decide, but
20 normally I would follow through and -- and at least do the
21 write-up, the reeducation, that you're high on your points,
22 because you need to know that you're getting close to that
23 mark, so.

24 Q You have looked at R-48, which was the performance
25 evaluation form.

1 A Yes.

2 Q Do you know if the CSS employees and supervisors are
3 evaluated using the same form?

4 A Yes, ma'am, they are.

5 Q You were -- you were testifying earlier about if something
6 went wrong or if an employee did something wrong, you would
7 also be, I think, counseled was the word regarding it?

8 A Depending on the situation. I mean, how I confronted it
9 or how I handled things with that employee, then Marcos would,
10 you know, maybe consult us both on whatever situation.

11 Q Would a documentation of that counseling go into your
12 personnel file?

13 A It depends on the situation, you know. But yeah. Yeah.
14 They're statements written at times.

15 Q Would it go on a disciplinary form?

16 JUDGE SANDRON: I think -- are you saying --

17 A (Indiscernible - simultaneous speech) --

18 Q BY MS. PENDER: For -- right --

19 JUDGE SANDRON: For the witness -- for the witness?

20 MS. PENDER: For the witness, right.

21 Q BY MS. PENDER: If -- if Mr. DeAbreu told you this
22 employee failed to fill out their increase supervision form,
23 will you receive a disciplinary form for that employee's
24 mistake?

25 A Not necessarily because sometimes it could just be a

1 verbal, you know, listen, this happened, and you know -- yeah.

2 Q I think you said that he would leave it in the folder with
3 a note to say, you know, have them fix this?

4 A Right. Those are, you know, our documents at night. If,
5 you know, someone failed to fill out their CVO, that they were
6 with that person, then they would correct it and -- and put
7 their last name and whatever happened, yeah.

8 MS. PENDER: Nothing further, Your Honor.

9 MS. TUMINARO: I just have a couple of questions, Your
10 Honor. First, did this witness prepare a Jencks statement?

11 MS. LANOUEETTE: No.

12 MS. TUMINARO: Okay.

13 **CROSS-EXAMINATION**

14 Q BY MS. TUMINARO: You -- did you do anything to prepare
15 your testimony today?

16 A Myself?

17 Q Yes. Did you meet with anyone to prepare your testimony?

18 A I met with Dawn prior to this.

19 Q And how many times did you meet with her?

20 A Just once.

21 Q When -- when was that -- that meeting?

22 THE WITNESS: What day was that, Dawn, that we met at --

23 JUDGE SANDRON: No, you can't -- you can't ask her.

24 Just --

25 Q BY MS. TUMINARO: You have to answer, sorry. To the best

1 of your recollection, when was that meeting? Was it prior to
2 today?

3 A Yes.

4 Q Prior to --

5 A (Indiscernible - simultaneous speech).

6 Q Was it -- was it recently?

7 A Yes, within this week.

8 Q Okay. Very good. And about how long was that meeting?

9 A About an hour.

10 Q I think you mentioned that one of the things you do as
11 supervisor is you walk around and you check on the CSS workers
12 who work under you, correct?

13 A Right.

14 Q And you give them -- you visit them every hour to give
15 them breaks, correct?

16 A Not every hour to give them breaks. I visit them every
17 hour just to make sure that everything's going right. They get
18 two 15-minute breaks and one half hour during the night.

19 Q And there's someone's who's assigned to give them break
20 relief on the assignments, correct?

21 A Correct. That's usually myself.

22 Q Okay. How many times a year does a code rainbow happen?

23 A On -- on night shift or are you --

24 Q On night shift, yes. In your experience on night shift,
25 how often does a code rainbow happen each year?

1 A We're pretty good on not having them.

2 Q Would you say it's less than five?

3 A I'm going to say it's less than 20.

4 Q Okay. Have you ever been disciplined, issued a written --
5 a written discipline in your file for something that happened
6 on your shift by -- that was the responsibility or the fault of
7 another employee?

8 A I have been written up prior to this. And I was CSS at
9 the time when I was written up.

10 Q So you weren't a CSS supervisor at the time?

11 A No.

12 Q I have nothing further. Thank you.

13 JUDGE SANDRON: Ms. Joslin?

14 MS. JOSLIN: Nothing, Your Honor. Thank you.

15 JUDGE SANDRON: Any redirect, Ms. Lanouette?

16 MS. LANOUEETTE: No, Your Honor.

17 JUDGE SANDRON: Okay. Thank you, Ms. Cruz. You're done.
18 Thank you for your time.

19 THE WITNESS: Thank you. Am I good?

20 JUDGE SANDRON: Yes.

21 MS. LANOUEETTE: Yes, you can go.

22 JUDGE SANDRON: You're all done.

23 MS. LANOUEETTE: You can get -- get out of here. Get some
24 sleep.

25 THE WITNESS: Thank you.

1 MS. JOSLIN: Can we take a brief comfort break, Your
2 Honor?

3 JUDGE SANDRON: Yes.

4 MS. JOSLIN: Just maybe --

5 MS. LANOUEETTE: Your Honor, my next witness is Zooming in
6 and we had told him 3:15, thinking that this would take until
7 then, so.

8 JUDGE SANDRON: All right. Then -- then why don't we
9 adjourn till 3:15 and then we'll take our afternoon break, and
10 then the witness should be here by 3:15 so --

11 MS. LANOUEETTE: Thank you.

12 JUDGE SANDRON: -- we'll -- go off the record.

13 MS. PENDER: Thank you.

14 (Off the record at 2:56 p.m.)

15 JUDGE SANDRON: Hi, Mr. -- how do you pronounce your name?

16 MR. PERAINO: Peraino, yes.

17 JUDGE SANDRON: Hi. Mr. Peraino, I'm Judge Sandron. I'm
18 conducting the trial. So I'm going to swear you in. So if you
19 will raise your right hand.

20 Whereupon,

21 **KEITH PERAINO**

22 having been duly sworn, was called as a witness herein and was
23 examined and testified as follows:

24 JUDGE SANDRON: Thank you. You -- you can lower your
25 hand. If you'll please state and spell your full and correct

1 legal name and provide us with an address, either residence or
2 work.

3 THE WITNESS: Keith Peraino, P, as in Peter, E-R-A-I-N-O.
4 Address 4959 Thames, T-H-A-M-E-S, Street East. That's in
5 Kissimmee, Florida 34758.

6 JUDGE SANDRON: All right, thank you.

7 **DIRECT EXAMINATION**

8 Q BY MS. LANOUEETTE: Mr. Peraino, where are you employed?

9 A Myself. CSAV360.

10 Q Okay. And what is the business of CSAV360?

11 A We do labor relations and operations consulting.

12 Q What education do you have?

13 A To evaluate management, communications-wise; to review the
14 basic guide to the National Labor Relations Act.

15 Q Mr. Peraino, for your own background what -- what degree
16 do you have?

17 A I have a master's in healthcare administration and a --
18 and a bachelor's in nursing. I'm a registered nurse. I also
19 have a bachelor's from Lehigh University in political science.

20 Q Okay. And what experience do you have working with the
21 National Labor Relations Act?

22 A A lot. I was a union organizer for the New York State
23 Nurses Association, I'm going to say about eight years or so.
24 Left in 2006. Was a VP of labor relations at a hospital in New
25 Jersey for three years. And then began consulting somewhere

1 around 2009.

2 Q Okay. Did there come a time you were engaged by Upstate
3 Group to perform service at Northeast Center for Rehabilitation
4 and Brain Injury?

5 A Yes.

6 JUDGE SANDRON: Mr. Peraino, before you go further, can
7 you make sure we get the name of your company right. Can you
8 just go -- it's C --

9 THE WITNESS: C as in cat, S as in Sam, A as in apple, V
10 as in Victor, 3-6-0.

11 JUDGE SANDRON: 3 -- and that's all one word or --

12 THE WITNESS: Yes. No -- no spaces.

13 JUDGE SANDRON: Okay. Thank you.

14 THE WITNESS: You're welcome.

15 MS. LANOUEETTE: Okay.

16 Q BY MS. LANOUEETTE: Approximately when were you first
17 engaged at Northeast Center?

18 A I believe it was July of 2019.

19 Q And why were you engaged at that time?

20 A We were engaged to supply management with the training
21 regarding the National Labor Relations Act, including
22 collective bargaining training. Communications training. To
23 evaluate their communications among the management team and
24 amongst the -- their relationship with employees. And we went
25 over -- at the time, there was some talk, I -- I -- I want to

1 say of union activity. So we went over the guidelines of what
2 managers can and cannot say.

3 Q Okay. And did you also conduct antiharassment training
4 for managers at Northeast?

5 A Yes, we did that as well.

6 Q With regard to the training that you provided to managers
7 on the dos and don'ts, could you describe for us what that
8 training includes?

9 A Sure. We go over the dos. I like to talk about anything
10 that have to do with facts. We call it FOE: facts, opinions
11 and experiences. For the don'ts. I'm a nurse, so I use the
12 analogy, don't spit. It's backwards, it's the TIPS training.
13 No threats, no interrogation, no promises, no spying or
14 surveillance, and no discrimination to any employee.

15 Q And what specifically, if -- if you can recall, did you
16 tell management employees regarding interrogation of employees?

17 A They were specifically told not --

18 MS. JOSLIN: Objection, Your Honor. There's no time
19 stamp, no date, no -- not which employees were present. Can we
20 get a little bit more foundation?

21 MS. LANOUE: Absolutely.

22 Q BY MS. LANOUE: Mr. Peraino, when did you -- sorry,
23 Peraino, when did you conduct -- first conduct a dos and don'ts
24 training at Northeast Center?

25 A Sometime in -- in July. We were only there, I'm going to

1 say, for about eight days or so in July. I'm not sure. I'm
2 going to say it was towards the end of July, if I had to guess.

3 Q Okay. And who attended this training?

4 A Management. Anybody who was a supervisor; unit manager;
5 the directors of the departments, including nursing, human
6 resources; Patrick, the administrator. I even think that the
7 regional person was at the meeting.

8 Q Who -- I'm sorry, where did this training occur?

9 A This happened on the second floor. I'm going to say it's
10 a conference room on the second floor of the building.

11 Q Would that be the administrative conference room?

12 JUDGE SANDRON: If -- if you know.

13 A If that's on the second floor, that's the name of it.
14 It's right off the steps -- or -- or the elevator to the right
15 when you get off.

16 Q BY MS. LANOUE: What did you tell management with
17 regard to inter -- I think you said one of the topics you cover
18 is interrogation as a don't. What can you tell us about what
19 you told the management employees regarding interrogation?

20 A In regards to interrogation, managers are specifically
21 told not to ask any employee if they are pro-union, anti-union.
22 Not to solicit grievances if there's any -- of what -- what
23 they thought. Or I guess they had some -- I don't know if it
24 was a fire or whatever, it might have had, that there was a
25 union movement taking place. So they weren't allowed to

1 solicit any grievances or ask what was wrong, what might drive
2 them to a union. And the reverse we would tell them. Even if
3 they're pro-company, you can't ask them if they're pro-company.
4 We -- you know, the goal is to establish communication with the
5 employees or establish some kind of trust. And I tried to
6 extrapolate how they feel about a union.

7 Q And what -- I think you said another topic you covered was
8 surveillance. What, to the best of your recollection, did you
9 tell management employees about surveillance?

10 A The same as I always tell management. If you know that
11 the Union is having a meeting at whatever location, stay away
12 from the -- for example, if the meeting's at a Dunkin' Donuts,
13 please stay away from Dunkin' Donuts the entire day. Don't go
14 by there; don't walk in there. You're not doing us any favors.
15 I tell that constantly.

16 Q How many such trainings did you hold in July of 2019?

17 A I want to say it was -- I want to guess that we were there
18 for about eight days. I'm going to say about eight days total.
19 So a couple of hours for each training.

20 Q Did -- did there come a time when you covered this topic
21 again with managers and supervisors?

22 A We did. I guess towards the end of October when we came
23 back to the facility, when there was an actual petition filed
24 by the Union.

25 Q Okay. And where was that meeting? Was that one meeting

1 or more than one meeting?

2 A That was more than one meeting. That meeting was done --
3 those meetings were performed in the -- on the first level.
4 That would probably be -- I don't know the name of the room,
5 but that's in administration, and it's the conference room.

6 Q And who attended those meetings?

7 A Again, all managers; supervisors; directors; Patrick, the
8 administrator.

9 Q And how many such trainings did you hold regarding the dos
10 and don'ts for supervi -- of managers at that time?

11 A The specific dos and don'ts were done at least once for
12 every manager. I can't tell you how many managers we get in
13 each meeting only because there was off-shift managers. We
14 tried to wait during their time, for example, the evening shift
15 supervisor or the night shift supervisor. But we had a
16 management meeting galley, which we would go over the dos and
17 don'ts with managers. Just briefly. Hey, remember, don't do
18 these things.

19 Q What did you tell management employees with regard to
20 employees gathering in groups at the facility?

21 A If employees are gathered in groups, we want to make sure
22 that, number one, employees are not gathered into groups on
23 work time. That it's people who belong on the unit who -- who
24 should be on the unit, for work purposes. If they're gathering
25 in groups, not to surveil the group but just to make sure that

1 people are indeed supposed to be where they are. And it's not
2 a very -- there's not a lot of employees on each floor. So for
3 example, I would say on a unit, there would be two -- two
4 employees on one unit. If they were going to see four or five
5 gathering together, that would have been an issue, which we
6 would have looked at.

7 Q Okay. And what did you tell management employees with
8 regard to breakrooms, parking lots?

9 A Every manager is always told that a union -- that whether
10 they are pro-union or anti-union, whatever topic they'd like to
11 talk about, meaning the employees, that those employers are
12 allowed to talk about whether they're pro or anti-union in
13 breakrooms, all times of the day. They can come back in on
14 off-shift as long as they sit in the breakrooms. They could
15 sit in the parking lots if they'd like to. We just want to --
16 we just ensure that it doesn't occur while people are working.
17 And I'm not talking about, hey, everyday conversation taking
18 place between some employees. I mean, if one employee comes in
19 or is on break and another employee is working, we don't want
20 the employee on break to approach the person who is working at
21 that time.

22 Q Did there come a time that you learned that there were
23 union organizing meetings being held off property at a pizza
24 place?

25 A Yes.

1 Q And when you learn that, what, if anything, did you tell
2 management employees about that?

3 A Please don't go to the pizza place. Please don't stop in.
4 Please don't have your family go into the pizza place, which
5 you know, becomes comical for some management, but as you know,
6 it can be, you know, a charge on our end even if you just walk
7 in accidentally.

8 To my knowledge, I have no idea if those meetings were
9 really at a pizza place, or if it was just something that some
10 manager had said at one point.

11 Q And -- and did someone report to you that there were off-
12 property meetings at a gas station, at some point?

13 A There was, but that was probably -- is somebody talking
14 or?

15 Q Wha -- what, if anything did you tell --

16 A Okay. I didn't know I heard some background, I'm sorry.

17 Q Sorry.

18 A We had -- as far as the -- I believe it was a Kwik Chek
19 that we learned that they might have been meeting at, but that
20 was very, very late -- much later, I'm talking probably within
21 the last week or so that I was even there.

22 Q What, if anything, did you tell management employees about
23 going to the Kwik Chek --

24 A So what (indiscernible, simultaneous speech).

25 Q -- after you learned that?

1 A Yeah, we -- we asked them to stay out of the Kwik Chek if
2 they knew there was a meeting. The problem with the Kwik Chek
3 meetings was we weren't sure what times of the day they were
4 at, as -- you know, given the location of the Kwik Chek, we
5 knew a lot of management, even ourselves, we would stop in
6 there for coffee before and after we went in, so it was a
7 little tough, but it was one of those things that we hoped not
8 to run into anybody who was having a meeting, which we never
9 did.

10 Q What is the "fact of the day"?

11 A The fact of the day is a piece of communication that we
12 would hand to management. We would use -- utilize it in a
13 management meeting. So let's say the fact of the day would be
14 about the process of collective bargaining -- we would take a
15 quote out of the basic guide to the National Labor Relations
16 Act that is the -- it's actually on the NLRB.gov website. We
17 would take a sentence off of there, hand it to management in a
18 management meeting, and ask them to give it to employees and
19 post it. Not -- not the managers to post it, Patrick would --
20 or I believe Julie would be the one to post it by the time
21 clock.

22 Q And what did you tell management employees to do when they
23 were handing out the literature?

24 A Again, just as a healthcare worker myself, I know
25 people -- healthcare workers -- don't necessarily often, of

1 course, have the time to read. They like to gey -- they -- we
2 have a different way of understanding as a healthcare worker,
3 let's put it that way. So I ensure that the manager read it to
4 them, or they read it, and if they have any questions, let us
5 know. Sometimes the topics are a little too -- too much for an
6 employee to understand or whatever jargon that we might quote
7 out of the NR -- NRLA. It might be a little bit too hard for
8 an employee to understand, but just let us know what the
9 feedback was. Do they -- do they get it? Do they -- are they
10 throwing it away without reading it? Are they interested in
11 the topics? Just to -- just to get an idea of, hey, what --
12 what are they gauging out of this.

13 Q And I think you said other than management training, you
14 also provided some consulting services with regard to
15 evaluating management?

16 A Yes.

17 Q What did you do to evaluate the management?

18 A We have a process -- we have a process just in an
19 everyday -- or in management meeting view and by talking to
20 management personally, one-on-one with -- I'm talking one-on-
21 one with management, we got a -- we get a pretty good idea of
22 their communications amongst each other and amongst their
23 employees, and they had some real problems in their management
24 team.

25 Q What -- what did you discover to be those real problems?

1 A The largest problem that they had, going back to when we
2 were -- when I was first there in July, was the -- probably the
3 director of nursing at the time. Not Carolyn, I -- I want to
4 say her name is Kathy maybe, the former DON.

5 Q Kathy -- Kathy McCormick?

6 A Kathy McCormick, that's right. It was pretty apparent,
7 and quickly, that she, in my opinion, had been there for too
8 long. She clearly was engaging in favoritism, management
9 favoriti -- other employees favoritism. She had a list which
10 she kept in her office, which was discovered. The list
11 actually said "untouchables," and had the name of eight
12 employees on it, and these were eight people who apparently
13 never could be written up and never could be in trouble or --
14 and weren't -- they could do anything --

15 MS. PENDER: I'm going to object to the characterization
16 of what Ms. McCormick felt about those eight employees?

17 JUDGE SANDRON: Sustained.

18 Q BY MS. LANOUEETTE: Mr. Peraino, did you speak to Ms.
19 McCormick about those eight employees?

20 A Yes.

21 Q And what did she tell you?

22 A At first, she denied there was a list.

23 MS. PENDER: I'm going to object to this as hearsay.

24 JUDGE SANDRON: And --

25 MS. LANOUEETTE: Well, it goes to why he made the decision

1 he made to recommend what he recommended.

2 MS. PENDER: I -- I'm not suggesting it's -- I mean --

3 THE WITNESS: There was this -- this list was not -- it
4 was management employees on this list as well.

5 MS. PENDER: Your Honor, I -- I think you need to rule
6 before he can keep talking about it.

7 JUDGE SANDRON: I'll -- I'll allow it.

8 Q BY MS. LANOUEETTE: What -- what did she tell you about the
9 list?

10 A First, she denied it. The list was given to us by, I
11 believe, the scheduler at the time who was also a supervisor,
12 and her -- when she denied it, and we told her we had a copy of
13 it, she then admitted to this list being a list of her favorite
14 people. And her people can come and go as they please
15 (indiscernible, simultaneous speech).

16 JUDGE SANDRON: We don't need -- we don't need really a
17 lot of detail --

18 MS. LANOUEETTE: Okay.

19 JUDGE SANDRON: -- about this, just --

20 THE WITNESS: Okay.

21 Q BY MS. LANOUEETTE: And after you concluded your management
22 surveys, what did you recommend to the facility?

23 A That the DON needed to go.

24 Q Okay. What else did you recommend as a result of your
25 management surveys relative to what management should be doing?

1 A Actually, we recommended that the human resources
2 department, we felt, was overstaffed and didn't know much about
3 human resources for the amount of staff that they had. I
4 didn't think the VP of HR knew much about human resources at
5 all or should even be a VP of HR. So we recommended trainings.
6 We recommended that, you know, the -- the -- the list and the
7 atmosphere that the DON had created had made people -- I don't
8 know if this makes sense but made them comfortable and
9 complacent instead of looking to make this a better workplace,
10 and they got used to just the same run of the mill.

11 Q What did you suggest that managers and department heads do
12 in order to make it a better workplace?

13 A It's -- it was to enhance communications. It was to cover
14 all shifts. We thought that they were definitely lacking in
15 covering all shifts. There were employees on the evenings or
16 nights that didn't -- hadn't seen anybody in management and
17 gotten any updates. Clearly, it was accepted. So we thought
18 definitely training was needed as far as how to communicate
19 with each other, with staff. That was really the focus of
20 everything.

21 Q I'm going to move you significantly forward in time now,
22 and ask if there came a time that you received a complaint
23 regarding Josh Endy?

24 A Yes.

25 Q And who made -- to the best of your recollection, who made

1 the complaint?

2 A We had a few complaints about Josh Endy. I could tell you
3 that it was from CNAs and PCC at that -- or CSS, I'm sorry, CSS
4 was their job title. Specifically, I don't remember any last
5 names, but I want to say that there was a CNA named Kristina,
6 first floor on the unit when you walk it. Another P -- CSS
7 named Magdalena (phonetic), I believe her name was, a Latino
8 woman.

9 JUDGE SANDRON: Do you know the spell -- do you know the
10 spellings of those names?

11 THE WITNESS: Kristina was with a K, and I want to say it
12 was -- the Latino woman's name definitely was with an M, either
13 Magdalena or Marisol (phonetic) -- that was my personal ones
14 who told me about their issues with Josh Endy. The issues
15 ranged from --

16 Q BY MS. LANOUE: Okay. Stop right there.

17 A Okay.

18 Q Approximately when did you get the complaint from Mari --
19 Magdalena?

20 A All right, it's the -- towards the end of the first week I
21 was there, so that would have been around October 31st,
22 November 1st, during that area.

23 Q Okay. And what was the com -- how did she bring the co --
24 where did the conversation take place?

25 A In the lobby.

1 Q Okay. How did she come to -- to bring the conversation --
2 or bring the complaint to you in the lobby?

3 A It was me saying hello, and her saying can I speak to you
4 on the side for a second, and I said sure.

5 JUDGE SANDRON: Do you remember the time that -- the time
6 it was?

7 THE WITNESS: Yeah, I -- I do, actually, because it was
8 when I was coming in to the workplace, so it was probably about
9 9:30 a.m.

10 Q BY MS. LANOUEETTE: And what did she tell you?

11 A This was an employee that probably -- I want to say that
12 I -- if I can recall she was there for about 18 years or so.

13 JUDGE SANDRON: All right. But we don't need the -- just
14 tell us, you know, what she said at this point.

15 THE WITNESS: She informed me that Mr. Endy was trying to
16 force people to sign cards.

17 Q BY MS. LANOUEETTE: Okay. And did you ask her anything
18 else about that?

19 A Not much. I just -- I -- I informed her that she has the
20 right to say no; she doesn't have to sign the card. She has
21 the right to sign the card. I don't want to know -- I -- and I
22 never want to know how -- if somebody signs or not, but it
23 seemed to bother her that --

24 JUDGE SANDRON: All right. Yeah --

25 MS. LANOUEETTE: Okay?

1 JUDGE SANDRON: Yeah, it's best if you just say, you know,
2 what was said.

3 THE WITNESS: Okay.

4 Q BY MS. LANOUEETTE: You said you received a complaint from
5 a CNA Kristina?

6 A Yes.

7 Q Approximately when was that complaint?

8 A I'd say probably a couple days later, November 2nd, or
9 3rd.

10 Q And where was the conversation with Kristina?

11 A Kristina actually came in to the administration office and
12 came in to talk to me in the administrative conference room,
13 probably around noon on one of those days.

14 Q Okay. And was anyone else present?

15 A There might have been another consultant present at the
16 time. I'm not sure. There was a knock on the door, we
17 answered, and she -- she wanted to talk. I let her in, and she
18 informed me, same line, same complaint that the other CSS
19 employee had -- had complained about. And she went a little
20 further to tell us that he didn't follow the dress code as a
21 supervisor, but they -- he --- he wanted them to follow the
22 dress code. He -- he seemed like he came and went as he wanted
23 which was not unusual for a supervisor which I believe going
24 back --

25 JUDGE SANDRON: All right. Yeah, I -- you know, just --

1 it -- it's going to be confusing if you add on to what was
2 actually said --

3 THE WITNESS: Okay.

4 JUDGE SANDRON: -- in the conversation, so just try to
5 limit it to what was said in the conversation --

6 THE WITNESS: Okay.

7 Q BY MS. LANOUEETTE: And --

8 JUDGE SANDRON: -- or we'll be confused as to, you know,
9 what was said and what you're saying.

10 THE WITNESS: Well, no, I did tell her that in our
11 conversation. I told her it's not unusual for a supervisor to
12 come and go, so.

13 JUDGE SANDRON: All right. Whatever you told her, that's
14 fine.

15 Q BY MS. LANOUEETTE: Did she say anything else to you at
16 that time?

17 A Yes. She said that she was a little afraid of him. I
18 actually didn't know what that meant. I informed her the same
19 thing as I informed the first employee, that was she doesn't
20 have to sign a card. She can sign a card. That's her
21 business. And if she felt that she was threatened in any way,
22 to please follow up with -- with Patrick and human resources.

23 Q Okay. And did you receive any additional complaints
24 regarding Mr. Endy?

25 A We did. Other -- other people -- other consultants had

1 reported that some of the employees were saying a lot more --

2 JUDGE SANDRON: Right. Well, yeah, that's -- that is
3 getting to be hearsay, so real, you know, unreliable.

4 Q BY MS. LANOUEETTE: What -- what did you do as a result of
5 the complaints that you had received and what you had heard?

6 A We spoke to Endy's director who was Marcos, and we decided
7 to have a meeting with him.

8 Q And where was that meeting held?

9 A In the administrative conference room.

10 Q And who was present?

11 A Marcos, myself, another consultant named Aubrey. I
12 believe that's it, and Mr. Endy.

13 JUDGE SANDRON: Is that A-U-B-R-E-Y? is that --

14 THE WITNESS: A -- her first name, A-U-B-R-E-Y, yes.

15 JUDGE SANDRON: All right.

16 Q BY MS. LANOUEETTE: And how -- what time of day was this?

17 A I would say, if I had to guess, midafternoon at some
18 point, maybe 3 or 4:00 in the afternoon.

19 JUDGE SANDRON: And do you remember what day that was?

20 THE WITNESS: Oh, what day?

21 JUDGE SANDRON: What date?

22 THE WITNESS: Oh, that -- I -- I suppose whatever would
23 have been his last day employed there. I guess that's what it
24 would be.

25 Q BY MS. LANOUEETTE: How did the conversation start?

1 A I had -- I informed him of the complaints that we received
2 and why he was there.

3 JUDGE SANDRON: Wait. I think -- are we starting -- you
4 had the conversation with -- you had the first conversation
5 with his boss, right?

6 THE WITNESS: Yes.

7 JUDGE SANDRON: So can you tell us about --

8 THE WITNESS: That --

9 JUDGE SANDRON: -- that conversation?

10 THE WITNESS: That conversation was not in front of Josh
11 Endy.

12 JUDGE SANDRON: Right.

13 THE WITNESS: Okay.

14 JUDGE SANDRON: Is that the one you were talking about?

15 THE WITNESS: No, I think -- wait a minute.

16 MS. LANOUEETTE: I -- I think he was talking about the
17 conversation with Mr. --

18 THE WITNESS: Endy.

19 MS. LANOUEETTE: -- En -- Endy.

20 JUDGE SANDRON: So you -- you didn't -- you didn't
21 (indiscernible, simultaneous speech)?

22 THE WITNESS: Maybe -- maybe I'm getting a little
23 confused. You asked me what time I met with Mr. Endy, correct?

24 MS. LANOUEETTE: Yes.

25 Q BY MS. LANOUEETTE: What we're trying -- the judge is

1 asking about your phone call with Mr. DeAbreau.

2 JUDGE SANDRON: Oh, you had a phone call with Mr.

3 (Indiscernible)?

4 A No, no. No phone call. With Marcos, the conversation I
5 had with Marcos was earlier in the morning the same day.

6 JUDGE SANDRON: All right. That's what I thought you were
7 covering. Maybe I was --

8 MS. LANOUEITE: Okay.

9 JUDGE SANDRON: -- not correct.

10 Q BY MS. LANOUEITE: So there was a conversation with
11 Marcos -- or Mr. DeAbreau earlier in the morning that day?

12 A Right.

13 Q When did that conversation take place?

14 A That took place right after the management meeting which
15 was probably about 10:30 a.m. that day --

16 JUDGE SANDRON: Okay.

17 A -- in person.

18 Q BY MS. LANOUEITE: And what did you say to Mr. DeAbreau?

19 A I told him about the complaints. He was concerned about
20 it. He asked us -- he actually thought it was a good idea to
21 have a meeting with him. I -- I told him that any kind of
22 supervisor involving himself in the Union organizing campaign
23 is a really big problem. And at the time, human resources, I
24 believe, was on the way out and making some changes, so we were
25 their option to meet with Marcos at the time.

1 Q And so what, if anything, did you do between the time you
2 spoke with Marcos and the time you met with Mr. Endy?

3 A What do you mean? I mean, we just waited for the meeting
4 to take place.

5 Q The meeting with Mr. Endy, where did that occur?

6 A That was in the administrative conference room, first
7 floor.

8 Q Okay. And who was present for the meeting with Mr. Endy?

9 A Marcos, Aubrey, myself.

10 Q Okay. And what if -- sorry, what time of day was that
11 meeting?

12 A I want to say it was midafternoon, probably around 3, 4:00
13 in the afternoon.

14 Q And what -- how did that meeting start?

15 A We informed him our -- why he was there, why we were
16 talking to him. I asked him if he knew what his position was
17 as a supervisor and he said yes. Do you want me to go into
18 everything we spoke about?

19 JUDGE SANDRON: Why -- yeah, why don't you --

20 Q BY MS. LANOUEETTE: What exactly did you say?

21 JUDGE SANDRON: Why don't you start from the beginning?

22 Q BY MS. LANOUEETTE: To the best of your recollection?

23 JUDGE SANDRON: Yeah, start -- start from the beginning,
24 that might be easier.

25 A So he came in. We informed him why he was there. We

1 informed him of the complaints that we had received. Actually,
2 I should say, I started with the dress code. I told him -- I
3 asked him why he doesn't follow the dress code as a supervisor,
4 that it's a bad thing. He's been in the supervisor meetings to
5 know that you have to follow the dress code, especially to set
6 an example for employees. And he told me he had to wear a
7 white T-shirt because white reflected the sunlight, and if it
8 wasn't white, he would get too hot. I informed him that the
9 job is inside the building, and the sun didn't shine inside the
10 building, so he needed to follow the dress code.

11 We then went into the complaints from the employees. I
12 informed him of his status as a supervisor. I ask him --
13 obviously, you were in the management meetings, you know you're
14 a supervisor. He said, I know. I said, you understand that
15 supervisors can't pass out cards? He said -- he might have
16 went to say something, and I said -- I gave him an example. I
17 said, if you use your position of authority and power to
18 influence them to sign cards, it could be considered a
19 management taint, and it violates the NLRA; it could be
20 illegal. I said it's the same way if there was a Union present
21 at the building, that if you were to help an employee get out
22 of the Union, you would be causing a management taint, and it's
23 something that would violate the NLRA. And I hope you
24 understand that you -- it's a big problem if you're in -- if
25 you're forcing people to sign cards to have -- put a Union in.

1 Q BY MS. LANOUEETTE: And what was his response?

2 A He got aggressive, anger. He told me that, in exact
3 words, there are other managers and supervisors who are passing
4 out cards, and I want to see change. I'm -- he started naming
5 the managers, and I told him I don't want to hear it; don't
6 talk anymore. I -- I don't want or need to hear their names.
7 We're talking about you right now. He then picked up -- took
8 his badge off, and he said I don't need this -- in plain
9 English, I don't need this -- am I allowed?

10 Q Yes, you can say --

11 JUDGE SANDRON: Go ahead, say it.

12 A I don't need this fucking job anyway. I already have -- I
13 can get a job at Home Depot tomorrow. He threw the badge at --
14 at myself and Marcos. He got up, he went to the door, slammed
15 it pretty hard into the wall. Obviously, he put a hole in the
16 wall. I did tell him, what you just did, between the badge and
17 the door is definitely workplace violence. I told Marcos to --
18 whatever he does, to make sure he reports up to Patrick and
19 corporate tomorrow, and that was the extent of that.

20 Q BY MS. LANOUEETTE: Did you follow Mr. Endy and Marcos out
21 of the room?

22 A No.

23 JUDGE SANDRON: So -- so was he told he was being fired or
24 are you saying that he threw the badge and -- and said he
25 didn't need the job?

1 THE WITNESS: Yeah, he was never told he was suspended or
2 fired --

3 JUDGE SANDRON: He was not fired.

4 THE WITNESS: -- in that room. Whatever took place
5 outside the room with Marcos is what happened outside the room
6 after that episode.

7 JUDGE SANDRON: I see, but in the room, he was not
8 specifically told that he was suspended or fired?

9 THE WITNESS: No. It wouldn't be our decision to make.
10 It could be a recommendation if that's what we thought, but
11 that decision ultimately lies in the director and Patrick or
12 corporate.

13 Q BY MS. LANOUE: Mr. Peraino, did there come a time you
14 received a complaint regarding a -- an employee named Kelly
15 Leonard?

16 A Yup -- yes.

17 Q What was the first complaint you received regarding Ms.
18 Leonard?

19 A The first complaint that we received was from two Latino
20 employees who said that Ms. Leonard was approaching them while
21 they were working or while they were in their of -- in their
22 office. Housekeeping is a -- it's a different company, HSG.
23 They -- I guess she went into the office to solicit them
24 signing -- to sign cards.

25 Q Okay. How did that complaint come to you?

1 A The two employees actually --

2 JUDGE SANDRON: All right. She's not -- she's not an
3 alleged discriminatee, is she?

4 MS. LANOUEITE: Yes, Your Honor. There are claims that --

5 MS. PENDER: She's not a discriminate; it's alleged that a
6 ULP was committed --

7 JUDGE SANDRON: Right, right.

8 MS. LANOUEITE: -- involving her.

9 JUDGE SANDRON: Right. Okay, right. She's not an alleged
10 discriminatee.

11 MS. LANOUEITE: No, Your Honor. But there are claims
12 related to this conversation.

13 JUDGE SANDRON: Regarding the 8(a)(1) allegations?

14 MS. LANOUEITE: Yes.

15 JUDGE SANDRON: All right. Go ahead.

16 Q BY MS. LANOUEITE: Mr. Peraino, how did you receive
17 this -- these complaints?

18 A Through one of the consultants who spoke Spanish. Both of
19 the employees spoke very little English, so I cou -- I received
20 it -- personally, I received it through our consultant. And
21 that consultant verified it with -- I don't remember his name,
22 but the director of the housekeeping department, the HSG, that
23 indeed, she had come into his office to solicit cards.

24 Q Okay. Approximately when did you receive this complaint
25 in terms of dates?

1 A Gosh, I don't -- I don't recall that offhand. Sometime, I
2 want to say, maybe in the third week after the petition was
3 filed.

4 Q Okay. Would that be in November of 2019?

5 A Yes.

6 Q And did the employees go to the director of housekeeping
7 with their complaints or did they come directly to you?

8 JUDGE SANDRON: I don't think --

9 A Well --

10 JUDGE SANDRON: Yeah, I'm not sure he would have that
11 information, would he?

12 MS. LANOUEETTE: I don't know.

13 JUDGE SANDRON: Yeah, so I don't think --

14 MS. LANOUEETTE: Okay. That's fine.

15 JUDGE SANDRON: -- he would have it.

16 Q BY MS. LANOUEETTE: Other than the complaint from the
17 housekeepers, did you receive any other complaints regarding
18 Ms. Leonard?

19 A It wasn't a complaint that we received, but there were
20 strange happenings from the residents in the facility, meaning
21 the patients in the facility. The strange happenings were that
22 patients would approach us as we were coming in and out of the
23 administrative offices, whether we went to the cafe or whether
24 we were just walking out of the building or coming in. We had
25 various patients approach us telling us that there's not enough

1 staff to take care of us. There's not enough supplies on the
2 floor for us. It happened more than a coincidentally amount of
3 times where we -- I thought something was very odd.

4 And one of the patients -- I finally asked, you know,
5 why -- why do you think that? I guess my nursing skills kicked
6 in. What makes you think that there's not enough supplies or
7 staff, and she told me, that's what the nurse is telling us.
8 And I said, oh, I'm very sorry that would happen because we --
9 you don't have anything to be anxious about. And she went on
10 to tell me again, that's what the nurses told us. And I said,
11 can you tell me who's telling you that, and she said Ms.
12 Leonard's name, Kelly's name.

13 Q Approximately when did that last -- when was the time
14 period that you were being approached by the patients with
15 these concerns?

16 A I would say I was probably approached personally over a
17 four- or five-day period, not knowing until about the -- on the
18 last day of the approaches, the who and why and where it was
19 coming from.

20 Q Was this also in November of 2019?

21 A Yes.

22 Q Okay. What did you do as a result of the complaints from
23 the housekeeping staff and the concerns raised by the patients?

24 A We brought the director of housekeeping, maintenance
25 director, Julie -- I don't know her last name, Julie --

1 Q Cole?

2 A Yup.

3 Q Julie Cole is J-U-L-I-E and Cole is C-O-L-E.

4 JUDGE SANDRON: Thank you.

5 A She's the director, I believe of medical records. I'm not
6 sure. I believe Lorraine might have been in there -- I -- I'm
7 not sure about that -- that's another director.

8 Q BY MS. LANOUEETTE: Lorraine, L-O-R-R-A-I-N-E.

9 JUDGE SANDRON: Thank you.

10 A Obviously, I was in there and the director of nursing,
11 Carolyn came in, probably midway through our conversation with
12 Kelly.

13 Q BY MS. LANOUEETTE: Why time of day was the conversation
14 you had with Ms. Leonard?

15 A Probably the same time frame, midafternoon somewhere
16 about, 3 to 5:00, in that area. Oh, no, I'm sorry. Wait a
17 second, hold on, couldn't be. She's an evening shift person,
18 so it had to be later, probably around 4 to 5:00.

19 Q Who started the meeting?

20 A I did.

21 Q And what did you say?

22 A We went over the first topic, which as complaints from the
23 two employees in the -- from the HSG or housekeeping
24 department. Her first thing Kelly said to me was, I'm not pro-
25 union. I informed her that this is -- I don't care if you're

1 pro-union or anti-union -- this has nothing to do with the
2 Union. I would tell you the same thing no matter where you
3 were standing. Whether you're pro-union or anti-union, please
4 don't bother people while they are working. I told her the --
5 they're not even employees of the center. That's why this
6 gentleman was sitting with us. Those are his employees. He
7 received the complaints. We asked her not to do it. I told
8 her, whether you're pro- or anti-, please do it on break time,
9 but when other people are on breaks in break areas, cafes,
10 wherever you want to do it, just not while people are working.

11 Q And did she have any response?

12 A She said she didn't do it, and I told her, regardless, we
13 have the complaints. They came from two different employees.
14 Again, they're not our employees. They're not even part of any
15 kind of election, so just asking you -- you can -- you're free
16 to do these kind of activities while employees and yourself are
17 on break or break areas.

18 Q Okay. After that occurred, what -- what happened next?

19 A I told her, and this was a touchy subject for me, being a
20 nurse -- I told her about the complaints that patients
21 informed -- that one patient informed me that she was telling
22 them that we were short-staffed and didn't have enough supplies
23 to care for the patients. And she told me -- her first words,
24 So what, I can do that if I want to. And I said, if I took my
25 hat off right now and went back to nursing, I would tell you

1 that is extremely unethical. You work in a neuro rehab, and
2 you think it's okay to make any patient even more full of
3 anxiety and nervousness is mindboggling. And she said it again
4 to me, they have a right to know if there's not enough supplies
5 or staff. And I might have even said, hey, I think it's
6 despicable that a nurse would do something like this. As a
7 nurse, I can't imagine working with a nurse who would ever even
8 admit to doing something like this.

9 She -- she did ask me at the time, something to the effect
10 of is this going to be reported to the Board of Nursing? I
11 said I don't -- we don't -- I don't report anything to the
12 Board of Nursing. I'm just telling you that that is really
13 unethical. It shouldn't be done. You know the kind of
14 patients that are here. This isn't a regular nursing home;
15 it's a neuro rehab. You cannot put fear and anxiety and
16 nervousness into a resident in this facility and then it
17 cascades into other residents and their family members. It's
18 not a good thing to do.

19 Q How did that conversation end?

20 A I asked her to please stop. She -- she -- I don't know if
21 she continued after that. We didn't get any more patients
22 approaching us after that, but Carolyn was in there, the
23 director of nursing at that time, and Carolyn just walked her
24 out.

25 JUDGE SANDRON: Well, how did -- how did -- what were the

1 last things said at the meeting itself; do you recall?

2 THE WITNESS: I -- I -- I probably am going to say that I
3 had a little bit of emotion, being a nurse, that she would do
4 that to patients, so I said I don't have anything else to say.
5 I think maybe the housekeeping director must have said
6 something about his employees being approached and asked -- oh,
7 yeah, actually, his -- he did say I would just appreciate if
8 you don't come into my office and talk to employees, but that
9 was it. After that, it was over.

10 Q BY MS. LANOUE: Do you know -- did you come to know of
11 an employee named Tara Golden?

12 A Yeah.

13 Q Did Ms. Golden attend your -- one of your sessions on
14 management dos and don'ts?

15 A Many.

16 Q Okay. Did there come a time that you had concerns about
17 Ms. Golden in a management meeting?

18 A Oh, yeah, many times, as well.

19 Q When was the first time that you had concerns about Ms.
20 Golden in a management meeting?

21 A The first time I had concern about Tara Golden was within
22 the first week there. I'm going to say it was probably the day
23 that the Union withdrew the petition. I'm -- I'm going to
24 guess it was Halloween. I don't know why I think it was
25 Halloween in my head that the petition was withdrawn, but I had

1 a concern about her on that day.

2 Q And where did your concern arise?

3 A In the administrative conference room after --

4 Q What was going on in the administrative conference room at
5 the time the concern arised?

6 A The typical management meeting that takes place.

7 Q What time of the day was the management meeting?

8 A It was always at 10 a.m.

9 Q And who was present?

10 A All managers, supervisors, Patrick, anybody at a -- a
11 supervisor level and above.

12 Q Okay. And what did she say or do that caused you concern?

13 A She was telling us how people were voting, or how they
14 would have voted for the Union. And that sparked me to ask
15 her --

16 Q Why did that -- why did that cause you concern?

17 A Because we made it very clear in every single meeting, not
18 to ask anybody if they were pro-union or anti-union, or how
19 they were voting. Through communicating with them, you know,
20 you should know if your communications are good, people are
21 going to come to you that trust you and have questions for you,
22 not asking them how they're voting. It seemed that she was
23 purposely asking them how they were feeling about the Union.

24 JUDGE SANDRON: Do you recall what -- what was said
25 immediately preceding -- you know, her statements? Do you

1 recall what -- what was said before she made those remarks?

2 THE WITNESS: Are you talking about the first meeting
3 where I said --

4 JUDGE SANDRON: Yeah, the one -- the one you're talking
5 about now.

6 THE WITNESS: Well, it -- it had to do with the typical
7 management meeting. So a typical management meeting literally
8 was handing out the fact of the day, reading it to
9 management --

10 JUDGE SANDRON: Right.

11 THE WITNESS: -- asking if they had questions. And we
12 would just go around the room and ask them, you know, what are
13 you hearing? What's going on? And they would go around the
14 room and tell us what was going on, meaning what are the
15 issues? What -- what could we be doing? What -- what sh --
16 how should we be messaging? And she was getting into -- her
17 exact comment was -- I can't remember the employee's name --
18 this person is anti-union. And I said, how do you know that?
19 And she said, I asked him. And that was a -- was a red flag
20 for me.

21 Q BY MS. LANOUEETTE: What did you say when she told you, I
22 asked him?

23 A I -- I said, I told you many times -- we say it every
24 meeting -- you can't ask questions like that. That's
25 considered interrogation. It's beyond an interrogation. As a

1 manager, you can't ask these kinds of questions. And she said,
2 well, I thought that's what I was supposed to do. And I said,
3 we've gone over this for -- it had to be four straight days
4 already, and you're not understanding there's a process here.
5 And that was that first meeting that I suspected that -- that
6 something was going on with her.

7 Q What did you do after that meeting with regard to your
8 concern?

9 A I told Patrick about it. I know Patrick heard it -- I'm
10 not sure if he heard it, actually, but I told Patrick about it,
11 and I told Dave about it who is the corporate operations
12 person. It wasn't until a second meeting --

13 Q Okay.

14 A -- which got us more.

15 Q Okay. When was the second time that you had concerns
16 regarding Tara Golden?

17 A The second time was the -- the following week. When she
18 came into the management meeting the next time --

19 Q Okay. What -- what -- where did the concern arise?

20 A In the administrative conference room, same time frame,
21 between 10 and 10:30 in the morning. I want to say it was the
22 following Wednesday or Thursday. And then the reason why I
23 want to say it was that time frame is there was a period of
24 time on the withdrawal of the petition. I think they filed an
25 RM petition, if I'm not mistaken, so we weren't sure how to

1 guide the meetings at the time; we were going -- reviewing that
2 kind of stuff -- excuse me.

3 But at that particular meeting, she brought out a notebook
4 at that particular meeting. And in that notebook, she had --
5 she was showing me, page by page, people's names, five or six
6 employees --

7 Q Sorry. There's an overhead code.

8 A Okay. That's okay. Those five or six pages with employee
9 names had various concerns from employees, various statements
10 made by them. And I -- I again told her, did you solicit this
11 from these employees? Did you ask them what was going on, and
12 she said, yes. I said I don't know how many times I can tell
13 you, you can't ask them what's happening, why are they upset,
14 how do they feel about it. How many times do we have to review
15 this? It was at that meeting -- after that meeting, that I
16 recommended that Tara not be in any more management meetings at
17 all. I thought she was looking to undermine us and purposely
18 draw an unfair labor practice.

19 Q Okay. And did -- did she attend any more management
20 meetings?

21 A I believe she came in -- there was a period of time she
22 wasn't there, and then I believe she might have come in once
23 after that.

24 Q Mr. Peraino, I just wanted to verify, you -- you're not a
25 lawyer; is that correct?

1 A No.

2 Q Okay. And did you make suggest --

3 JUDGE SANDRON: Well, just one thing, when you say is that
4 correct --

5 MS. LANOUEETTE: I'm sorry --

6 JUDGE SANDRON: -- and he answers no, is that correct?

7 Q BY MS. LANOUEETTE: Mr. Peraino, are you a lawyer?

8 A No.

9 Q I -- did you make suggestions while you were advising
10 Northeast Center that were implemented?

11 A Sometimes.

12 Q Okay. And when you were discussing options with Northeast
13 Center regarding the Union campaign, was every suggestion you
14 made implemented?

15 A No. No. There are (indiscernible).

16 MS. LANOUEETTE: I have no -- I have no further questions.

17 JUDGE SANDRON: Okay. Ms. Pender, do you -- do you think
18 you can finish your cross-examination --

19 MS. PENDER: An hour?

20 JUDGE SANDRON: -- by 5:00?

21 MS. PENDER: Yes, absolutely, Your Honor.

22 JUDGE SANDRON: All right. Why don't you go ahead? Maybe
23 we can finish with the witness today, if possible.

24 MS. TUMINARO: And can I just ask -- did the witness
25 provide a Jencks statement?

1 MS. PENDER: No.

2 JUDGE SANDRON: Well, all right. Why -- why don't we go
3 forward, and maybe we can finish with the witness today.

4 MS. PENDER: Okay.

5 **CROSS-EXAMINATION**

6 Q BY MS. PENDER: Hi, Mr. Peraino.

7 A Hi.

8 Q My name is Alicia Pender, I'm the attorney for the NLRB
9 here today.

10 A Okay.

11 Q I just have a few questions for you. If you can't hear me
12 at any time, just let me know, and I'll repeat. Okay? Okay.
13 I can't hear you, actually. Can you speak up a little bit?

14 MS. HAMMONDS: I think your microphone fell down.

15 Q BY MS. PENDER: Ah, okay.

16 THE WITNESS: Can you hear me now?

17 MS. HAMMONDS: Yes, that's much better. Thank you.

18 THE WITNESS: So just to be clear --

19 Q BY MS. PENDER: The first time you --

20 THE WITNESS: -- there's others -- sorry. There's --
21 there's three board agents on the -- one board attorney and two
22 agents, is that who I'm looking at?

23 MS. LANOUILLE: No, Mr. Peraino. Ms. Tuminaro is the
24 attorney for the Union, and Ms. Joslin is the attorney for Tara
25 Golden.

1 THE WITNESS: Oh, okay.

2 MS. LANOUE: Ms. Pender is the attorney for the -- the
3 Board.

4 JUDGE SANDRON: Ms. -- Ms. Hammonds is serving as the
5 courtroom deputy.

6 THE WITNESS: Oh, I see.

7 MS. LANOUE: Yes, Ms. Hammonds is keeping us all on
8 track.

9 THE WITNESS: All right. I get it. Okay. I understand
10 now.

11 MS. PENDER: Yes, she's -- she's making the Zoom function.

12 JUDGE SANDRON: Right. She's invaluable. And Mr. Baker
13 is the court reporter, you see his name.

14 THE WITNESS: Right. Okay.

15 Q BY MS. PENDER: You -- you testified before that you were
16 at Northeast for a period of days in July of 2019, right?

17 A Yes.

18 Q And then you -- you returned in October, after the Union
19 filed its petition?

20 A Yes.

21 Q And you stayed, even after the Union withdrew its
22 petition?

23 A Yes.

24 Q How long did you stay at Northeast after the Union
25 withdrew its petition?

1 A I want to say -- not personally, but somewhere in the
2 range of six to eight weeks, maybe.

3 Q So for six to eight weeks after the withdrawal of the
4 petition, maybe not you personally, but your business
5 maintained a presence at Northeast?

6 A Yeah, whether -- and I mean by that, it could have even
7 been by email. I would say, consistently, we were probably
8 there for about four weeks consistently after the Union
9 withdrew the petition.

10 Q So approximately through the -- throughout the month of
11 November?

12 A Oh, yeah. Absolutely, yes.

13 Q And you testified that you not only did meetings with
14 managers, but also with employees, right?

15 A Yeah. I didn't do all of the meetings with the employees,
16 a few -- personally.

17 Q You did some of them?

18 A Some of them, yeah.

19 Q Okay. And how -- who determined what employees should
20 attend your meetings?

21 A Good question. So in the normal course of doing the
22 trainings, we would try to make it where, of course, it could
23 go by staffing, who's available and when to come. And usually,
24 we would -- we would leave that decision to the administrator
25 and ask them to coordinate with their directors or in the

1 management meeting, coordinate who would be coming in for the
2 day.

3 Q Was it the goal that all employees would be able to attend
4 at least one meeting?

5 A Yes.

6 Q Was there a list maintained of who had not yet attended a
7 meeting and still needed to attend?

8 A We tried to do a list. The problem with a list is that we
9 had -- we always try to do a sign-in sheet, just so we know we
10 hit all employees, but there are, I would say, 50 percent of
11 employees don't like to sign in. They're very cautious about
12 it, so -- you know, we would always get to the point where we'd
13 just try to do a head count by department of who came and who
14 didn't. And then we would have the director ask them, hey, who
15 went, who didn't, et cetera. There were people who might have
16 come twice, and it happened.

17 Q Were employees evaluated based on what level of support
18 for the Union they might exhibit?

19 A The evaluation for a level of support of the Union is one
20 thing for us, and I call it either you're a soft support or
21 hard-core support. And the reason why I -- I use that
22 determination is just from my past experience, especially as an
23 organizer. I would rather not have the hard-core support mixed
24 in with people who are just -- might be too afraid; they want
25 to absorb some knowledge. I knew how -- I'm not going to get

1 into details, but the hard-core support -- we don't want to not
2 do hard-core support, but I would rather have them towards the
3 end, so if they wanted to smoke or not learn, they could do it
4 on their own.

5 Q All right. Were there different lists maintained of soft
6 Union support versus hard Union support employees?

7 A A list by -- actually, no. It was -- it was basically,
8 you know, whatever the manager's thought and whatever we would
9 read on body language or whatever it might be.

10 Q So whatever you or the managers assessed to be someone's
11 level of Union support dictated which of the meetings they were
12 encouraged to attend?

13 A It was supposed to have been like that. However, I --
14 again, the petition was withdrawn so fast that we tried to get
15 it like that, but it was -- when the petition was withdrawn, it
16 was just, okay, everybody can come. I -- I mean the RC
17 petition, not the RM petition.

18 Q Right.

19 A Okay.

20 Q You testified about a meeting with Kelly Leonard that you
21 attended in November of 2019; is that right?

22 A Yes.

23 Q You testified that the maintenance director was present
24 for that meeting?

25 A He was.

1 Q Why was he there?

2 A Usually, when we have these meetings, I would always like
3 to have Patrick, the administrator, or somebody in HR just --
4 just a certain level of directors so I'm not alone, on an
5 island alone, let's put it that way. And he was there in the
6 area. We asked him to sit in.

7 Q Was Andrew from HR also there?

8 A He might have been. I won't discount that. He might have
9 been. Andrew, though, his position in HR wasn't -- he was a --
10 he was a payroll person.

11 Q Right.

12 A So.

13 Q Were any other consultants besides you present at that
14 meeting, to your recollection?

15 A I believe there was one. I -- I don't recall which one.
16 If you told me, I'd just say -- I would have to say okay.

17 Q Who was Lorraine?

18 A Lorraine was the director of -- I want to say physical
19 therapy; am I right, Dawn? Rehab?

20 MS. LANOUILLE: Vice counsel director of rehab.

21 MS. PENDER: Thank you.

22 Q BY MS. PENDER: Why did you think that Tara Golden was
23 purposely trying to draw an unfair labor practice charge?

24 A She on -- on the various occasions that I discussed, and
25 plus there was a third occasion or fourth occasion where she

1 had come in with the same kind of list soliciting grievances
2 and telling us that I -- I think one of my colleagues might
3 have even asked her, did you actually ask them if they're pro-
4 union and she said yes. This was a manager, an RN who had come
5 to me for extra help on this topic, literally. I didn't think
6 it was that difficult to not ask these kind of questions of
7 employees.

8 Q I'm just curious about why you think those actions meant
9 that she wanted to draw a ULP specifically, as opposed to just
10 being overzealous?

11 A I've never had that problem in all my years, that one
12 manager would purposely -- in my opinion, purposely do this
13 time and time again after being told not to.

14 MS. PENDER: I have nothing further, Your Honor.

15 JUDGE SANDRON: Ms. Tuminaro?

16 MS. TUMINARO: Just a few questions, Your Honor.

17 **CROSS-EXAMINATION**

18 Q BY MS. TUMINARO: Good afternoon, Mr. -- Mr. Peraino. Is
19 that how you pronounce it, Peraino?

20 A Perfect.

21 Q Okay. Good. The term "pro-union" is a term you yourself
22 use; isn't that right?

23 A Yes.

24 Q You mentioned in your testimony a CNA named Kristina,
25 correct?

1 A Yes.

2 Q And she provided you and others with a lot of information
3 about the Union's campaign, correct?

4 A Well, just the complaint about --

5 Q She didn't provide -- sorry, I didn't hear you. I didn't
6 mean to cut you off.

7 A You're talking about -- you're -- you're talking about the
8 Kristina that complained about Josh Endy?

9 Q Yes.

10 A Two different people, I believe.

11 Q Was there another Kristina who provided you with
12 information about the Union's campaign?

13 A Not that I'm aware of, of Kristina at all providing me
14 about anything about -- about the Union campaign. She -- the
15 Kristina that I referred to provided me with information about
16 Mr. Endy.

17 Q So then you never met a Kristina who gave you intel about
18 the Union?

19 A The -- Kristina who?

20 Q Anyone named Kristina?

21 A Intel about the Union, no.

22 Q You were aware that employees were leaving during their
23 break time to meet with the Union outside the building,
24 correct?

25 A I was aware that they were leaving without punching out

1 for break --

2 Q And you wrote --

3 A -- and using company time to walk around the building, to
4 go outside. We even had complaints of an employee -- there was
5 four employees in one particular department that ended up
6 getting moved under the guidance of Lorraine in -- the director
7 of rehab, because they actually punched in and disappeared for
8 the rest of the day.

9 Q And as a result, you recommended that they install a lock
10 on the side door, correct? So that you could monitor peoples'
11 comings and goings?

12 A No. The lock was on a door in the -- okay. I guess you
13 could say that. The side door lock was because one employee in
14 particular was accused or said to have been coming back into
15 the building on his off shift to deal marijuana. And we
16 thought it was import --

17 Q To what? I'm sorry, to what?

18 A To deal marijuana, you know, weed.

19 Q To deal marijuana. Oh, okay.

20 A Yeah.

21 Q I thought that's what you said, but I wasn't sure. Thank
22 you.

23 A Yeah. I can't substantiate whether that's true or not,
24 but my recommendation, of course, is to put a lock on the door.
25 It shouldn't be opened just to open it.

1 Q Okay. I'm going to share my screen. Hang on one second.
2 Mr. Peraino, can you see this document? I'm going to mark it
3 for identification as Union Exhibit 14. And it's -- I'll try
4 and get it a bit bigger. Do you -- do you recognize this
5 document?

6 A Yup.

7 Q It's an email that you sent to Patrick Weir and Dave
8 Camerota on November 11 -- November 17, 2019, correct?

9 A Yup.

10 MS. TUMINARO: I'm going to move this into evidence.

11 THE WITNESS: Well, then can I just read it? Can I read
12 the last paragraph?

13 MS. TUMINARO: Sure.

14 THE WITNESS: Okay.

15 MS. TUMINARO: I -- I move it in -- I move it -- request
16 to move it into evidence?

17 JUDGE SANDRON: Do you recognize that document?

18 MS. TUMINARO: I -- I'm sorry, I didn't hear you.

19 JUDGE SANDRON: Oh, I asked -- I asked him, do you
20 recognize that document?

21 THE WITNESS: Yes, I do. I mean, it was written by me, I
22 assume. Right?

23 MS. TUMINARO: I can put it back up if you'd like to see
24 it again. I thought he said that he recognized it.

25 JUDGE SANDRON: Oh, did he say that?

1 MS. TUMINARO: Yes.

2 THE WITNESS: Yeah, no, I did.

3 MS. TUMINARO: I --

4 JUDGE SANDRON: Okay. Any objection?

5 MS. PENDER: No objection.

6 JUDGE SANDRON: The doc --

7 MS. PENDER: I assume we'll be getting copies?

8 MS. TUMINARO: Certainly.

9 JUDGE SANDRON: The -- the document is received.

10 **(Union Exhibit Number 14 Received into Evidence)**

11 THE COURT REPORTER: What exhibit is this?

12 JUDGE SANDRON: It's R -- excuse me, Union 4.

13 THE COURT REPORTER: Union 4.

14 MS. TUMINARO: Union 14.

15 MS. PENDER: Union 14.

16 MS. TUMINARO: 14, sorry.

17 JUDGE SANDRON: Thank you.

18 THE WITNESS: So the intel referred to in that paragraph
19 on the next document --

20 MS. TUMINARO: Sorry, Mr. Peraino, I don't have a question
21 pending.

22 JUDGE SANDRON: Yeah, why don't you wait for her?

23 THE WITNESS: Okay.

24 JUDGE SANDRON: Okay.

25 MS. LANOUILLE: You don't have to talk if there's no

1 question.

2 Q BY MS. TUMINARO: Mr. Peraino, it -- it wasn't Kelly
3 Leonard who you received complaints about using patients to
4 complain about staffing, was it?

5 A There was -- that was the main one. There might have been
6 other employees, but that was the main one.

7 Q But do you recall anyone else?

8 A I -- I -- there probably was another person.

9 Q When you wait --

10 JUDGE SANDRON: Well -- well, wait, we'll just --

11 MS. TUMINARO: Sorry, I didn't mean to cut --

12 JUDGE SANDRON: Yeah, just --

13 MS. TUMINARO: I didn't mean to cut you off.

14 JUDGE SANDRON: See if he can remember.

15 A Yeah, there probably was another person at the time or
16 two, I just don't recall them offhand.

17 Q BY MS. TUMINARO: And this was -- I think you said it was
18 early November that you heard this complaint from patients?

19 A Yeah, from the patients, yes.

20 Q And di -- and -- I'm sorry, did you say you -- you could
21 recall the other -- if there was anyone else who you heard was
22 using patients to complain about staffing or supplies?

23 A I don't know who. I remember that there was, and I don't
24 know offhand who that was.

25 Q Okay. Hang on one second. I'm going to share my screen.

1 Mr. Peraino, I'm going to show you what's been marked as Union
2 Exhibit 15, and I'll represent for the record that the name
3 Jonathan Parker, at the top, is my legal assistant who I asked
4 to put the Union exhibit number on and --

5 A Iris -- okay. I remember Iris (phonetic) complaining,
6 yup.

7 JUDGE SANDRON: All right. And he -- can you just spell
8 his name so that we have it on the record, Jonathan --

9 MS. TUMINARO: The -- the name of my legal assistant?

10 JUDGE SANDRON: Yes.

11 MS. TUMINARO: That -- it's Jonathan, J-O-N-A-T-H-A-N,
12 Parker, P-A-R-K-E-R.

13 JUDGE SANDRON: All right. We have to be consistent
14 asking for spellings.

15 MS. TUMINARO: Sure. I can have that removed from the
16 document.

17 JUDGE SANDRON: Well, I -- well, -- well, we -- that --
18 that's fine. We can leave it on. It won't be considered part
19 of the --

20 MS. TUMINARO: Okay. Thank you.

21 JUDGE SANDRON: -- document that's admitted.

22 Q BY MS. TUMINARO: Mr. Peraino, can you see this document
23 which I've placed before you which is Union Exhibit 15?

24 A Yeah, uh-huh.

25 Q Do you recognize the document other than the doc --

1 A Yeah, I know I recognize that -- I -- I remember now that
2 Iris was one of the other employees.

3 Q Okay.

4 A That's correct.

5 MS. TUMINARO: I'm going to move this document into
6 evidence.

7 JUDGE SANDRON: Any objection?

8 MS. PENDER: No objection.

9 JUDGE SANDRON: The document is received.

10 **(Union Exhibit Number 15 Received into Evidence)**

11 Q BY MS. TUMINARO: Mr. Peraino, you were aware that the
12 employees were communicating in a secret employee Facebook
13 group, correct?

14 A That's what we heard, yes.

15 MS. LANOUEETTE: Your Honor, I'm going to obj --

16 MS. TUMINARO: Wait one second.

17 MS. LANOUEETTE: -- as to how this relates to any of the
18 charged conduct?

19 MS. TUMINARO: Well, he's -- he testified that they didn't
20 know names of anyone and that they weren't getting specific
21 information from people. They were just soliding -- soliciting
22 peoples' opinions or -- you know, feelings --

23 THE WITNESS: I didn't -- I didn't testify to that.

24 JUDGE SANDRON: Wait, wait, wait.

25 THE WITNESS: I didn't say that at all.

1 MS. TUMINARO: He testified, Your Honor --

2 JUDGE SANDRON: Wait just a second.

3 THE WITNESS: I never said those words at all.

4 JUDGE SANDRON: Wait, Mr. Peraino, don't --

5 THE WITNESS: Yeah, but she can't put words into my mouth,
6 it's --

7 JUDGE SANDRON: Right. But -- all right. So --

8 MS. LANOUEETTE: I -- I get to argue that.

9 JUDGE SANDRON: Right.

10 MS. LANOUEETTE: But I agree, Your Honor. He -- he --
11 that's not what he testified to at all. What he te --

12 JUDGE SANDRON: Maybe you want to rephrase that, Ms.
13 Tuminaro?

14 MS. TUMINARO: Sure. I'll -- I'll rephrase, thanks.

15 JUDGE SANDRON: But again, Mr. Peraino, you --

16 THE WITNESS: Okay. I've got it. So Dawn will do the
17 talking, I've got it.

18 JUDGE SANDRON: Right.

19 THE WITNESS: Okay.

20 MS. LANOUEETTE: I will renew my objection to any regarding
21 a secret Facebook group as not related to any of the charged
22 conduct in this case.

23 JUDGE SANDRON: Well, maybe we should ask Ms. Pender as
24 the General Counsel. Do you see a conne -- a conne -- a nexus
25 with the allegations?

1 MS. PENDER: In terms of showing animus, there could be.
2 I don't -- I don't know the document that Ms. Tuminaro is
3 referencing, but if it -- if it reflects, you know, animus
4 toward a Union group or animus toward Union activity, then I
5 think it certainly would be relevant.

6 JUDGE SANDRON: All right. Well, I'll allow a little --
7 a -- a few questions, but you know, we -- we don't want to get
8 into a fishing expedition, so.

9 MS. TUMINARO: I understand, Your Honor. I'd just like to
10 show the witness one document.

11 JUDGE SANDRON: All right. Go ahead.

12 Q BY MS. TUMINARO: Mr. Peraino, do you recognize this
13 document? It's been marked for identification as Union Exhibit
14 7. It's two pages, and I'm going to scroll to the bottom so
15 you can start with the original message which is dated October
16 10th, 2019 -- I'm sorry, October 30th, 2019. Do you see that
17 there?

18 A Yup.

19 Q And is that an email that you sent?

20 A Yup.

21 Q And -- and then you -- and you sent the email to Mr. Weir,
22 Seth Rinn, and Dave Camerota?

23 A Yup.

24 Q And then in response, on page 1 of 2 of Union Exhibit 7,
25 you received a response from Seth Rinn?

1 A Yup.

2 Q And then you responded as well?

3 A Right.

4 MS. TUMINARO: I'd like to move this document into
5 evidence.

6 JUDGE SANDRON: Well, are you contending it -- that it was
7 an illegal action?

8 MS. TUMINARO: Well, I'm contending that the employer in
9 this matter has -- has denied that they had animus towards the
10 Union, that they were just providing solely informational
11 education to employees. And I'm offering that as proof that
12 they were, in fact --

13 JUDGE SANDRON: Well --

14 THE WITNESS: Well, that's not the reason why.

15 JUDGE SANDRON: Just a -- just a second. How does that
16 show animus though?

17 MS. TUMINARO: Well, they were trying to block employees
18 from accessing a -- a secret Facebook page that -- from in the
19 building, and as a way of interfering with employee
20 communications about the Union.

21 JUDGE SANDRON: All right. Well, I'm not -- not sure I --
22 I initially see that, but -- so I won't rule at this point on
23 what it shows.

24 MS. TUMINARO: I u --

25 JUDGE SANDRON: If there's -- he's authenticated it, so

1 does the General Counsel have a position?

2 MS. PENDER: I agree with the Union, Your Honor. I think
3 to the extent that it shows that Respondent's response to the
4 organizing campaign went beyond providing information and
5 attempted to prohibit -- or stop employees from communicating
6 about the Union, then I think it shows animus.

7 MS. LANOUEETTE: Your Honor, I -- I think if Mr. Peraino
8 would be allowed to speak as to why the email came about, we
9 would find out it had nothing to do with Union animus.

10 MS. TUMINARO: Well, did he --

11 JUDGE SANDRON: Well, you could do -- oh, just a second --

12 IN UNISON: (Indiscernible, simultaneous speech).

13 JUDGE SANDRON: Wait, wait. One at a time.

14 MS. TUMINARO: Come on.

15 MS. LANOUEETTE: Well, I understand that, but we seem to
16 have a lot of argument about what it shows or doesn't show.

17 JUDGE SANDRON: All right.

18 MS. LANOUEETTE: I think I'm entitled to say I can show it
19 doesn't show Union animus.

20 MS. LANOUEETTE: Your Honor -- she's
21 (indiscernible, simultaneous speech) --

22 JUDGE SANDRON: Wait, just a second. One at a -- hold --
23 hold it. If we get out of hand, we'll just go off the record.

24 Ms. Lanouette, you'll have an opportunity on redirect if
25 you want to go -- get into anything relating to, you know,

1 what's been asked on cross. I'll overrule the objection and
2 allow the document.

3 **(Union Exhibit Number 7 Received into Evidence)**

4 MS. TUMINARO: I have nothing further, Your Honor. That's
5 it.

6 JUDGE SANDRON: And again, Ms. Lanouette can ask, you
7 know, any follow-up questions on redirect.

8 Ms. Joslin, any questions?

9 MS. JOSLIN: Yes, Your Honor. Thank you.

10 **CROSS-EXAMINATION**

11 Q BY MS. JOSLIN: Mr. Peraino, as -- as you were already
12 notified, I'm counsel for Tara Golden, so I just have a few
13 questions in follow-up to your testimony.

14 A Okay.

15 Q So you mentioned that you were -- you were at the facility
16 for, you think, about eight days in July of 2019; is that
17 right?

18 A Yes.

19 Q Okay. And then you came back in October; is that right?

20 A Yes.

21 Q How long were you there in October?

22 A I -- personally, I'm going to say I was there at least
23 through the end of November. That's personally.

24 Q Okay. But when did you get there? Maybe I missed it, I
25 apologize.

1 A The only way I can frame it is three days before the
2 petit -- the RC petition was withdrawn.

3 Q Okay. So do you know if you were there for like, one
4 week, three weeks? Do you have any idea?

5 A Three days. Oh, you mean total or before the petition?
6 Total, oh, at least four weeks I was there.

7 Q Okay.

8 MS. TUMINARO: I just need to take a brief -- I'm sorry,
9 I've gotten an emergency text about a medical alert alarm and I
10 just -- I hear a beeping. I just need --

11 JUDGE SANDRON: All right.

12 MS. TUMINARO: -- to take a brief break. I'm sorry, I'll
13 be right back.

14 JUDGE SANDRON: All right. We'll -- let's go off the
15 record for a couple of minutes. And as soon as you get back,
16 we'll resume.

17 (Off the record at 4:40 p.m.)

18 MS. JOSLIN: I actually don't remember exactly what it
19 was, but I'll do my best.

20 JUDGE SANDRON: Okay.

21 **RESUMED CROSS-EXAMINATION**

22 Q BY MS. JOSLIN: BY MS. JOSLIN: I guess I -- oh, maybe I
23 was trying to figure out from Mr. Peraino --

24 A You asked me about the time frame I was there.

25 Q Right. Exactly. So do -- do you have any better recall

1 on how -- how many weeks you might have been there in October?

2 A I want to say at least four. It could have been longer.

3 I want to say it could have been longer. It could have been
4 shorter, let's put it that way.

5 Q Okay. And was it -- was it every day that you went in?

6 A I would say Monday through Thursday was a pretty
7 consistent thing for myself.

8 Q Okay. Okay. And you first met Tara Golden in October of
9 2019; isn't that right?

10 A Could be. I might have met her there in the first eight
11 days there. I'm not sure, though. That I don't know.

12 Q Okay. If I tell you that she was on vacation the first
13 time you were there, does that ring a bell?

14 A Yeah, it does, actually.

15 Q Okay. So -- so is it fair to say, then, that the first
16 time you met her was in late October?

17 A Probably the -- the second week, then. Yeah.

18 Q Okay. All right.

19 A No, it couldn't have been late October. It would had to
20 have been the second week that I was there, which was early
21 November.

22 Q Early November?

23 A I -- am I wrong about the petition being withdrawn or
24 filed? What -- what day was the petition filed? If somebody
25 could tell me that, I could tell you when I was there.

1 Q Okay. I don't have that information.

2 MS. PENDER: It's in the Joint Exhibits if --

3 JUDGE SANDRON: Yeah, I think anybody can -- it -- it's
4 not a disputed fact even, yeah.

5 THE WITNESS: So if the petition was filed by -- I'm just
6 trying to think, if the petition was filed on a Friday, I think
7 I was there probably on a Monday or Tuesday. And then I think
8 it was withdrawn on a Thursday or Friday, I want to say.

9 MS. LANOUE: It was withdrawn -- I don't know when.

10 Q BY MS. JOSLIN: I think it was filed on October 28th and
11 withdrawn on October 30th.

12 A Then I probably was there -- if that was my first date, it
13 would have been October 28th. I wouldn't have been there
14 unless the petition was filed. That's what I'm trying to say.

15 Q Okay. So sometime in late October you first met Tara
16 Golden; is that right?

17 A Well, not if she was on vacation at the time -- I do
18 remember that though, yeah.

19 Q Okay. That's fine. That's fine. Do -- do you -- did you
20 hear that Ms. Golden had been suspended for a few days in
21 October of 2019?

22 A In October of 2019? I thought it was later.

23 Q Okay. But you heard from some source that she had been
24 suspended in or around fall of 2019?

25 A I -- I thought it was during a period when I was there

1 that she had been suspended. Maybe I'm wrong.

2 Q Okay. Did you -- did you discuss Tara's suspension with
3 Mr. Weir?

4 A Not why she was suspended, but that she was suspended.

5 Q Okay. How did that come up in conversation? Do you know?
6 Do you remember?

7 A I don't recall that, but I -- I -- I don't honestly recall
8 that.

9 Q Okay.

10 A Any kind of those management questions has to go through
11 a -- any kind of -- that goes through with -- which I consider
12 the corporate VP of nursing and Patrick, so I don't know.

13 Q Did you provide any flyers or documentation to corporate
14 or to Mr. Weir to -- to hand out to employees at the facility?

15 A Yes, every day.

16 Q Okay. And was that material meant for people in the
17 management meeting or was it meant for other employees at the
18 facility, or both?

19 A It was meant for the management team to hand out to the
20 employees.

21 Q Okay. And you instructed them to hand those documents to
22 employees; isn't that right?

23 A Yes. First, we would go over the document and make sure
24 the manager understands it, and then instructed them to give it
25 to the employees.

1 Q Okay. And that documentation held what I think you termed
2 "educational information"?

3 A Oh, yeah. Mostly, it's facts. It could be educational
4 information about the NLRA. It could have been facts about the
5 Union. It could have been facts about anything.

6 Q Okay. And when were the management meeting attendees
7 supposed to hand out this documentation to other employees?

8 A Hopefully, during the course of the day when the
9 employees, preferably, went on their 15-minute break in the
10 morning or lunch time, or -- you know, in passing at the nurses
11 stations, whenever that might have been.

12 Q Do you -- did you specifically tell them to hand it out
13 during break time or off-shift time?

14 A Not specifically, but at some point, they were supposed to
15 give it to the employees.

16 Q Didn't you learn though, that that information was being
17 passed out to employees while they were working?

18 A We didn't ask specifically, but I wouldn't be surprised.

19 Q Okay. But you heard that, didn't you, that that
20 information was, in fact, being passed out and discussed with
21 employees during their work time?

22 A Yes.

23 Q Okay. Did you tell them to stop doing that?

24 A No, I think management has -- should -- they -- they can
25 use their own judgment.

1 Q Okay. But you did tell them not to -- you did tell them
2 that employees shouldn't be discussing Union activities or
3 Union information during work time; isn't that right?

4 A During work time in patient care areas. We can't control
5 what anybody talks about at a nurses station, for example. If
6 they want to talk about a barbecue that they were at, we're not
7 going to limit talk at a nurses station, but in a resident
8 hallway or in a resident room, that's a big no, whether they're
9 for or against.

10 Q Did you provide any documentation about what you termed
11 "the don'ts" of management's response?

12 A As far as paperwork?

13 Q Yeah.

14 A I don't believe so. I believe that we did it on a white
15 chalk -- dry-erase board.

16 Q Okay. So you didn't put it up on a PowerPoint
17 presentation or anything like that?

18 A I -- you know, I don't remember a PowerPoint presentation.
19 If you told me that I used one, then I may have for management,
20 I think there was discussion that we were going to use one, and
21 I don't believe we ever used the PowerPoint as far as I can
22 recollect.

23 Q So the "don'ts" were expressed to the management meeting
24 attendees by writing on a white board?

25 A Multiple times. Many, many times.

1 Q And that was like a dry-erase board?

2 A Yeah.

3 Q Okay.

4 A We would have -- but that -- that particular dry-erase
5 board with the TIPS and the -- what I call FOE and the TIPS
6 what to do and not to do, that was always maintained on the
7 wall. In other words, that was present in every manager
8 meeting. It was always present in that conference room.

9 Q Did you -- did you have a book or a notebook or some sort
10 of record of your work for the Northeast Center?

11 A As far as -- as hours or anything or?

12 Q Well, anything. Did you take notes about things that you
13 did? Did you -- do you keep copies of your materials that you
14 gave them? Did you --

15 A Oh, we --

16 Q -- keep record of your work for them?

17 A We keep copies, of course, of material that we pass out,
18 yes.

19 Q Okay. Do you have copies --

20 A Copies of the facts of the day.

21 Q Do you keep copies of your email communications with
22 Northeast Center?

23 A I was told by corporate that -- to limit them, so not
24 many. Do I keep them? No.

25 Q Do you -- do you send invoices to your clients as a

1 consultant?

2 A No. Not to the --

3 Q How do you -- how do you get paid?

4 A It's a lump sum.

5 Q Lump sum. Do -- are you paid up front or are you paid
6 afterward?

7 A It's in thirds, a little up front, a little in the middle,
8 a little at the end.

9 Q Do you recall how much you were paid by the Northeast
10 Center for your work?

11 A Why is that relevant to the --

12 JUDGE SANDRON: Wait, wait, wait. Stop.

13 MS. LANOUE: I'm going to object.

14 JUDGE SANDRON: I -- I don't know what -- you know --

15 MS. JOSLIN: Your Honor, I can't hear you. I'm sorry.

16 JUDGE SANDRON: I -- I think that, really, is not really
17 an appropriate question, and I don't know what relevance it
18 would add.

19 Q BY MS. JOSLIN: Mr. Peraino, were you paid for your
20 testimony today?

21 A No.

22 Q Are you going to send an invoice for the time that you
23 spent today?

24 A No. I'd like to, but no.

25 Q Okay. And during the brief break we just had, did you

1 have any communications with your -- with Ms. Lanouette?

2 A Dawn, no. I spoke to my son about the -- I just spoke to
3 my son about making Texas Tech.

4 Q You didn't talk to Ms. Lanouette at all about the Facebook
5 posts?

6 A Oh, when we were --

7 MS. LANOUEETTE: Everyone could hear that.

8 THE WITNESS: Everybody can hear that. That was on here.

9 MS. JOSLIN: Yeah. Yeah, Your Honor, this is witness --
10 it was under oath. I just want to make my objection on the
11 record to the fact that they did discuss the document that was
12 a hotly contested document under -- you know, while he was
13 still under oath.

14 JUDGE SANDRON: All right. So just --

15 MS. LANOUEETTE: Mr. Peraino began to discuss it, and I
16 said stop, I will ask you questions. I don't need to hear from
17 you.

18 MS. JOSLIN: Your Honor, I'm just making my note -- my
19 noted objection on the record.

20 JUDGE SANDRON: All right. And Ms. -- and Ms. Lanouette's
21 response is on the record.

22 MS. JOSLIN: I'm all set, Your Honor. Thank you.

23 JUDGE SANDRON: Okay. I think, then, we're ready for
24 redirect.

25 **REDIRECT EXAMINATION**

1 Q BY MS. LANOUEETTE: Mr. Peraino --

2 A Can I just put my light on? Once second here.

3 Q Yeah, sure.

4 A I've got to stay out of the darkness here, hold on.

5 JUDGE SANDRON: Yeah, you -- it is hard to see. That's
6 true. Okay. That's much better.

7 Q BY MS. LANOUEETTE: Mr. Peraino, you were shown Union
8 Exhibit 14 with regard to intel?

9 A Yes.

10 Q And -- and you wanted to explain what intel was. What --
11 what is the intel in that email?

12 A The intel that we were talking about had to do with,
13 actually, providing the communications that management was --
14 one of our basic jobs is to make sure management is doing their
15 job and communicating. The intel that Kristina -- I just saw
16 her last name, I forgot again -- Merritt (phonetic) -- whatever
17 her last name might be -- was providing was how well she
18 thought management was communicating. I'm not sure if -- that
19 was a different Kristina that had to do with Josh Endy. That
20 was the intel that we were talking about.

21 Q And with regard to why the Facebook group was being
22 blocked, why would -- why did you suggest that?

23 A Because employees were on Facebook on their phone all day
24 long. As many hours as they worked, they were on that -- on
25 that Facebook. And when we figured out -- or somebody told us

1 that because of the secret Facebook group, and then we knew
2 that -- okay, we're seeing Facebook. Maybe it's time to cut
3 Facebook so employees can actually get to work on patient care.

4 Q Why did you not cut, say, text message access?

5 A Because you can't -- they could have been texting, but
6 my -- personally, people that I know, there is no reception in
7 that building for texts.

8 MS. LANOUEETTE: I have no other questions.

9 JUDGE SANDRON: Ms. Pender, does the General Counsel
10 contend that was a violation?

11 MS. PENDER: Contend -- I'm sorry, contend what was a
12 violation?

13 JUDGE SANDRON: You know, what the -- the action that the
14 Employer took or the Respondent took in regard to the Facebook,
15 are you -- are you contending that was a violation itself?

16 MS. PENDER: Not -- not a fresh violation, but
17 demonstration of animus.

18 JUDGE SANDRON: Okay. Any follow-up questions?

19 MS. PENDER: I just had one real -- just literally one
20 question.

21 JUDGE SANDRON: Yes. Do cross.

22 **RECROSS-EXAMINATION**

23 Q BY MS. PENDER: Mr. Peraino, when did your -- when did
24 your -- I don't know -- I don't know if you want to call if
25 employment or when did you stop providing services to

1 Northeast, or are you still in the course of providing them to
2 them?

3 A Oh, no, no, no. It stopped. I want to guess and say
4 somewhere in -- after the New Year, January.

5 Q Of -- of after the New Year of 2021?

6 A No, no, of 2020.

7 Q Okay.

8 MS. PENDER: All right, thank you. Nothing further.

9 JUDGE SANDRON: All right. Mr. Peraino, I think you're
10 done testifying. Thank you for your time.

11 THE WITNESS: All right. Thank you, all.

12 JUDGE SANDRON: So Ms. Lanouette, it's almost 5, so I
13 think it might be best to -- how many more witnesses do you
14 have?

15 MS. LANOUEETTE: One.

16 JUDGE SANDRON: All right. Okay. And then, I don't know
17 if the General Counsel or other counsels will have any
18 rebuttal, but why don't we, then, resume at 10 a.m. tomorrow
19 and we'll plan on concluding testimony. Just to give you an
20 idea, I think what we'll do tomorrow is, well, how -- how many
21 days do you think it will take to get all the documents in the
22 proper format? A few days, do you think? This would go to all
23 counsels, just to make sure --

24 MS. TUMINARO: I will have all of mine in tonight, Your
25 Honor. The -- the ones that I showed today. I think I put in

1 three new ones, and I've already uploaded the others I did
2 earlier.

3 MS. PENDER: The General Counsel Exhibits are all already
4 done.

5 JUDGE SANDRON: Well, of course, Ms. Lanouette has more
6 voluminous documents, so how --

7 MS. LANOUEETTE: And Your Honor, it would be wonderful if I
8 were at my office, but I'm three hours away from home, so I'm
9 not going to get home until sometime Friday night.

10 JUDGE SANDRON: So wh -- when would you like, three or
11 four days?

12 MS. LANOUEETTE: If I could have Monday and Tuesday, I
13 don't think I need more than that.

14 JUDGE SANDRON: All right. Well -- well, what I can do
15 tomorrow is set Wednesday, maybe close of business, to
16 provide -- and -- and Mr. Baker is on the line --

17 THE COURT REPORTER: Yes, sir.

18 JUDGE SANDRON: -- or here on Zoom. He's not really on
19 the line, but anyway, what -- what I think I would do is give
20 the Respondent's counsel or -- or all counsels for that matter,
21 although I think it's only going to relate to Ms. Lanouette,
22 until close of business Wednesday to provide to you and you
23 know, I guess, everybody else the --

24 THE COURT REPORTER: Okay.

25 JUDGE SANDRON: -- all of the Respondent's documents in

1 proper format. And then what I'll probably do is Thursday,
2 issue a -- an order closing the record and scheduling, you
3 know, the 35-days period for the filing of briefs.

4 THE COURT REPORTER: Okay.

5 JUDGE SANDRON: And -- and I'll --

6 MS. TUMINARO: Your Honor, can we -- I -- I would just
7 request that we -- I don't know how long it's going to take for
8 the transcript to come, so I'm wondering if we could have 35
9 days after the receipt of the brief -- after the receipt of the
10 transcript?

11 JUDGE SANDRON: Well, actually, the -- the procedure --
12 I'll put it on the record tomorrow, but I think the most that I
13 can give you is 35 calendar days, you know, starting the day
14 after the -- I close the record, but you can request a -- yeah,
15 what do you call it, an extension, and I'll go over that
16 procedure to -- tomorrow.

17 MS. PENDER: I think you can also -- I think Mr. Baker
18 might know better than -- than I know, but I think you can also
19 request an expedited transcript from the court reporting
20 service.

21 JUDGE SANDRON: Right. And -- and I'll explain it
22 tomorrow. You -- but if -- if you need more time, you can make
23 a request. And generally speaking, a first request is granted
24 in most circumstances, so I'll go over that tomorrow, but
25 that's just kind of like heads up of what we're going to do on

1 the exhibits and closing the record.

2 So okay. Well, I think then, we had a productive day. I
3 will see all of you tomorrow at 10, and we'll plan on taking
4 the final witness or witnesses as the case may be. So have a
5 good evening.

6 **(Whereupon, the hearing in the above-entitled matter was closed**
7 **at 4:56 p.m.)**

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C E R T I F I C A T I O N

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 3, Case Numbers 03-CA-252090, 03-CA-254186, 03-CA-255155, NCRNC LLC D/B/A NORTHEAST CENTER FOR REHABILITATION AND BRAIN INJURY and 1199 SEIU UNITED HEALTHCARE WORKERS EAST and TARA GOLDEN, held at the National Labor Relations Board, Region 3, 11A Clinton Avenue, Albany, New York 12207, on January 28, 2021, at 10:04 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



THOMAS BAKER

Official Reporter

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

NCRNC LLC D/B/A Northeast	Case Nos.	03-CA-252090
Center for Rehabilitation and		03-CA-254186
Brain Injury		03-CA-255155

Employer,

and

1199 SEIU United Healthcare
Workers East

Petitioner

and

Tara Golden

An Individual.

Place: Albany, New York (Via Zoom videoconference)

Dates: January 29, 2021

Pages: 864 through 898

Volume: 5

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Phoenix, AZ 85020
(602) 263-0885



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

NCRNC LLC D/B/A NORTHEAST
CENTER FOR REHABILITATION AND
BRAIN INJURY

EMPLOYER,

and

1199 SEIU UNITED HEALTHCARE
WORKERS EAST

PETITIONER

and

TARA GOLDEN

AN INDIVIDUAL.

Case Nos. 03-CA-252090
 03-CA-254186
 03-CA-255155

The above-entitled matter came on for hearing, pursuant to notice, before **IRA SANDRON**, Administrative Law Judge, at the National Labor Relations Board, Region 3, 11A Clinton Avenue, Albany, New York 12207, on **Friday, January 29, 2021, 10:06 a.m.**

1 A P P E A R A N C E S

2 **On behalf of Employer:**

3 **DAWN LANOUILLE, ESQ.**
4 HINMAN, HOWARD & KATTELL, LLP
5 700 Security Mutual Building
6 80 Exchange Street
7 Binghamton, NY 13901
8 Tel: (607)231-6917
9 Fax: (607)723-6605

7 **On behalf of General Counsel:**

8 **ALICIA PENDER, ESQ.**
9 NATIONAL LABOR RELATIONS BOARD
10 130 S. Elmwood Avenue, Suite 630
11 Buffalo, NY 14202
12 Tel: (716)551-4931
13 Fax: (716)551-4972

11 **On behalf of Petitioner:**

12 **AMELIA TUMINARO, ESQ.**
13 GLADSTEIN, REIF & MEGINNISS, LLP
14 817 Broadway, 6th Floor
15 New York, NY 10003
16 Tel: (212)228-7727

15 **On behalf of Ms. Golden:**

16 **LISA JOSLIN, ESQ.**
17 **NANCY WILLIAMSON, ESQ.**
18 GLEASON, DUNN, WALSH & O'SHEA
19 40 Beaver Street
20 Albany, NY 12207

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I N D E X

WITNESS

DIRECT

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RECROSS

VOIR DIRE

Julie Cole

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E X H I B I T SEXHIBITIDENTIFIEDIN EVIDENCE**Respondent :**

R-56

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1 P R O C E E D I N G S

2 JUDGE SANDRON: All right. I -- back on the record. Ms.
3 Lanouette, you have your next witness, so I will go ahead and
4 swear her in.

5 I -- I'm the judge in this proceeding, so I'll swear you
6 in. So if you can raise your right hand.
7 Whereupon,

8 JULIE COLE

9 having been duly sworn, was called as a witness herein and was
10 examined and testified, telephonically, as follows:

11 JUDGE SANDRON: Okay. And you can put your hand down. If
12 you will please state and spell your full and correct legal
13 name and provide us with an address, either home or work.

14 THE WITNESS: Julie Cole, J-U-L-I-E C-O-L-E. The address
15 is 300 Grant Avenue, Lake Katrine, New York 12449.

16 JUDGE SANDRON: Thank you.

17 DIRECT EXAMINATION

18 Q BY MS. LANOUEETTE: Ms. Cole, where are you employed?

19 A At the Northeast Center for Rehabilitation and Brain
20 Injury.

21 Q And what is your current position at the Northeast Center?

22 A I am the director of medical records and the legal
23 liaison.

24 Q And how long have you held that -- tho -- those dual
25 positions?

1 A Since March of 1999.

2 Q In your duty as director of medical records and legal
3 liaison, what are your job duties?

4 A For medical records, I'm responsible for the compliance
5 and the maintenance of all of the medical records in the
6 facility, requests going in and out.

7 Legal liaison, I assist the facility's attorneys with any
8 legal matters within the facility, be it guardianships,
9 collection matters, Medmals, this.

10 Q And as part of that role, do you also maintain official
11 copies of policies required by the Department of Health?

12 A Yes.

13 Q Okay. Ms. Cole, what education background do you have?

14 A I have high school diploma, some college, some
15 certifications.

16 Q And -- and what are you -- what certifications do you
17 hold?

18 A Certified brain injury specialist, certified nursing
19 assistant and that's it.

20 Q Where is your office located in the facility?

21 A In the administrative suite.

22 Q Okay. Before July of 2019, how often did you leave the
23 administrative suite to go to other parts of the facility?

24 A Daily.

25 Q And what do you do when you go to other parts of the

1 facility?

2 A Multiple things: Meet with resident neighbors, meet with
3 staff, do rounds for compliance, audits, multiple things.

4 Q All of 2019, how, if at all, did your practice of your
5 daily walks around the facility change?

6 A --Not much.

7 Q We've heard testimony that managers were instructed to
8 walk around the facility --

9 MS. PENDER: I'm going to object to this. She -- I mean,
10 it -- if she can ask a -- a -- a non-leading question.

11 JUDGE SANDRON: Yes. That -- that would be preferable.

12 Q BY MS. LANOUE: Ms. Cole, do you ever walk around the
13 facility and offer to help but not actually help?

14 A --No. If I offer to help, then I would help.

15 Q You (audio interference) ever received instructions not to
16 help?

17 A --No.

18 Q Did there come in a -- a time in 2019 that you were asked
19 to be part of an investigation regarding Cathy Todd?

20 A Yes.

21 Q And what happened that involved you?

22 A I was asked to interview two female patients that I have a
23 relationship with.

24 Q Who asked you?

25 A The administrator.

1 Q Okay. And when did those interviews of patients occur?

2 A In the evening.

3 Q Do you remember approximately the date?

4 A I do not.

5 JUDGE SANDRON: Did he -- did he name the two individuals,
6 or did you select them?

7 THE WITNESS: He named them.

8 Q BY MS. LANOUILLE: When you met with, we'll call it
9 patient 1 -- and we'll -- I'll ask that you only give us their
10 first initial for the -- for the record. Who else was present?

11 A For patient nu -- number 1 was Carolyn Carchidi.

12 Q Okay. And for that patient, what is their first initial
13 of their first name?

14 A J.

15 Q Okay. What did J tell you during your interview?

16 A She told me that Cathy Todd had been withholding
17 nourishments from her -- food. She was aggressive to --
18 towards her in speaking to her. That she was very upset that
19 Cathy was withholding her medica -- or her nourishments from
20 her.

21 The patient, at the time, had a problem when she was
22 eating, she would tend to spit. There were, you know, things
23 put in place for that. Cathy told her, at one point, that she
24 didn't have fucking time for that.

25 The patient was really quite upset. Apologizing that she

1 had these behaviors and that she would work on the behaviors so
2 that she would be allowed to eat. And she just kept repeating
3 those things to me.

4 Q What, if anything, did you say to her?

5 A It was really -- it was a very upsetting thing. I told
6 her that she was fine and that her behaviors were, you know --
7 that the -- the -- the spitting issue was something that she
8 could not prevent because of her brain injury, that she should
9 be allowed to eat food when she wanted within her care plan,
10 and Carolyn and I got her some food to eat at that point in
11 time.

12 Q When did you interview patient 2?

13 A Shortly after the first interview with patient number 1.

14 Q And who was present?

15 A Carolyn Carchidi was there for that one as well.

16 Q Where did the interview take place?

17 A In the administrative conference room.

18 Q And I forgot to ask you that. Where did the interview of
19 patient J take place?

20 A In the administrative conference room.

21 Q Okay. What is the first initial of the first name of
22 patient 2?

23 A R.

24 Q Okay. And when you met with R, what did you ask R?

25 JUDGE SANDRON: Was -- was any --

1 MS. LANOUE: I ask --

2 JUDGE SANDRON: --Wait. Was anybody else there but the
3 two of you?

4 THE WITNESS: The -- it was myself, the patient, and the
5 director of nursing, Carolyn Carchidi.

6 JUDGE SANDRON: Okay. Thank you. Go ahead.

7 A I asked her specifically if she had any issues with
8 nursing or any specific nurses on the unit in regards to
9 withholding food, as that was the initial allegation. The
10 patient -- that patient also reported that she was being --
11 that Cathy Todd -- she named her specifically -- that she was
12 withholding food from her if -- if Cathy felt she wasn't
13 behaving the way she should be behaving. Her nourishments were
14 being withheld in the evening.

15 And also, she was preventing her from making her evening
16 phone calls to her family if she felt that she didn't behave
17 the way she was supposed to. She also stated that she would
18 sit her by the nurse's station in a chair and allow all of the
19 other patients to make phone calls either in front of her or in
20 place of her.

21 She also relayed information to -- to us in regards to
22 other patients as Cathy would discuss other patients, their
23 behaviors, diagnoses, medications with the patients that were
24 at the nurse's station.

25 Q BY MS. LANOUE: What if -- after you conducted these

1 interviews, what did you do?

2 A I immediately reported it to the administrator.

3 JUDGE SANDRON: Th -- that's Mr. Weir?

4 THE WITNESS: Yes, sir.

5 Q BY MS. LANOUEETTE: And what did you say to Mr. Weir?

6 A I told him that I -- that I conducted the interviews, what
7 my findings were, what the patients had reported. Told them --
8 him that it did -- that it was abuse under the New York State
9 Department of Health regulations. And that, in following our
10 protocol and our policies, she should be suspended immediately.

11 Q Okay. And are you familiar with the New York State
12 Department of Health guidelines with regard to abuse?

13 A Yes.

14 Q And if I show you Exhibit R-12, which is in the book next
15 to you, and ask you if you've seen that document -- have you
16 seen it before?

17 A You want me to look in the book?

18 Q I do.

19 A Oh.

20 Q Or it's going to come up on the screen if you want to
21 wait.

22 A Okay.

23 JUDGE SANDRON: That might be easier.

24 THE WITNESS: Easier.

25 JUDGE SANDRON: That book has a lot of documents. I

1 understand.

2 THE WITNESS: Sure does.

3 Q BY MS. LANOUEETTE: Ms. Cole, do you recognize Exhibit
4 R-12?

5 A Yes.

6 Q Okay. And what is Exhibit R-12?

7 A That is New York State Department of Health -- Health
8 Incident Reporting Manual.

9 Q And -- I think if we stop there, does -- are -- are you
10 familiar with this manual?

11 A Yes.

12 Q Okay. At the time you met with Mr. Weir, did he ask you
13 your opinion as to what should happen?

14 A Yes.

15 Q And what did you tell him?

16 A My opinion was that Cathy Todd should be terminated
17 immediately and not be allowed to work with patients.

18 Q Why was that your opinion?

19 A Under the guidelines wr -- in -- having to actually listen
20 to these patients cry that she withheld basic human, you know,
21 stuff -- food, medications, the right to talk to your family --
22 is -- is a very high level of abuse, in my opinion. It's
23 horrible.

24 Q All right.

25 MS. LANOUEETTE: We can stop the screenshare.

1 Q BY MS. LANOUEETTE: Ms. Todd, are you familiar with the
2 fact that there was union activity at the facility in the fall
3 of 2019?

4 A Yes.

5 Q Okay. What, if anything, did you know about Ms. Todd's
6 involvement with the union?

7 A Not much, as, you know, Cath -- Cathy Todd and I, you
8 know, are -- are -- we didn't cross paths often. I didn't
9 speak to her very often. Maybe in the hallway, hello, goodbye,
10 that sort of thing.

11 Q Okay. What, if anything -- anything you heard going
12 around the facility influence your decision, your interviews,
13 or your recommendation in this case?

14 A Absolutely not.

15 Q Okay. Ms. Cole, in your capacity as legal liaison, are
16 you familiar with the policies required to be maintained at the
17 facility for the New York Department of Health?

18 A Yes.

19 Q I'll show you what's been marked as Exhibit 30 -- I'm
20 sorry -- wh -- what is Exhibit 30 in evidence. And ask if you
21 recognize this document?

22 A Yes.

23 Q And what is Exhibit 30?

24 A Exhibit 30 is an er -- intensive NBI policy for the NBI
25 unit.

1 Q Okay. And is the NBI policy required to be maintained by
2 the New York Department of Health?

3 A Yes.

4 Q Okay. Ms. Cole, there's revised dates on this policy.

5 A Um-hmm.

6 Q Did you make a search of the facility's official records
7 to determine when this policy was next updated?

8 A Yes.

9 Q And when was that?

10 A November 25th, 2020.

11 Q Were there any updates between 11/1/2013 and November
12 25th, 2020?

13 A No.

14 MS. LANOUE: And that is the end of this screenshare.
15 I have no more documents for this client -- or this witness.

16 Q BY MS. LANOUE: I -- so we've heard testimony regarding
17 a parking lot incident. Do you recall an incident in a parking
18 lot in which you were involved?

19 A Yes.

20 Q When, in terms of date, approximately did that occur?

21 A Probably sometime in October of 2019.

22 Q Okay. And what time of day?

23 A It was around 3 p.m., change of shift.

24 Q Okay. And what occurred to involve you?

25 A A employ -- an employee called me, very upset that there

1 was people in the parking lot and cars parked haphazardly. She
2 was upset that the road or the spot where they are to pull in
3 was blocked by people. She felt that that was the reason she
4 was late for work. She -- she said she felt harassed. She was
5 very upset. So I went out to the parking lot to see what was
6 going on.

7 Q And when you went out to the parking lot, what did you
8 discover?

9 A There were a few cars parked in non-parking areas. There
10 were people standing in front of the area where the staff were
11 trying pull in and out. And several people stopping the cars
12 or blocking the cars from moving.

13 Q Okay. What did you do?

14 A I -- I asked -- it -- it was a -- a union person. I asked
15 him to please leave the property and to move their vehicles.
16 He was not real responsive to that.

17 Q Wh -- what was the response?

18 A He started yelling, saying that they had every right to be
19 there. He called me a foul name. He continued to direct the
20 other people there to stand in the -- in the driveway. At that
21 point, I asked another employee to move his vehicle in the road
22 so it would naturally, kind of, reroute the -- the cars coming
23 in and out to the other entrance of the parking lot for safety
24 reasons.

25 JUDGE SANDRON: How did you know this individual was with

1 the union?

2 THE WITNESS: He was wearing an 1199 shirt. So --

3 JUDGE SANDRON: Okay.

4 Q BY MS. LANOUEETTE: You didn't know the name of this
5 individual though?

6 A No.

7 Q This was not an employee of Northeast?

8 A It was not.

9 Q Okay. I -- I think you may have said but why did you ask
10 Mr. DeAbreu to put his vehicle where -- in front of --

11 MS. PENDER: Objection. She didn't name -- yeah.

12 JUDGE SANDRON: Yeah, I don't think she named the person.

13 MS. LANOUEETTE: Oh. I'm sorry.

14 Q BY MS. LANOUEETTE: Who -- who did you ask to move your
15 vehicle?

16 A Marcos DeAbreu.

17 Q And why did you ask him to move his vehicle?

18 A He was actually there. I think he was trying to leave for
19 the day. So it was a convenience thing for me. He was in his
20 vehicle.

21 Q And -- and why did you ask him to move it to where he did?

22 A I had serious concern that there would either be an
23 accident with vehicles involved or I, myself -- when the cars
24 were -- were trying to go around the other vehicles and people,
25 that I was going to get hit by a car. It was not a good

1 situation. It was not safe.

2 Q Okay. What did you do then?

3 A I call -- I actually called the local police department
4 because I felt that the situation was getting out of hand.
5 There was yelling involved, cursing, the employees coming in
6 were confused. It -- it was just not a good situation.

7 Q Do you know a Tara Golden?

8 A Yes.

9 Q And did there come a time you reported a concern regarding
10 Ms. Golden to Mr. Weir?

11 A Yes.

12 Q In terms of date, approximately when was that?

13 A October 2019, maybe. I don't -- I don't really remember
14 the date.

15 Q And approximately what time of day?

16 A It would -- I think it was in the morning as we frequently
17 had morning meetings. So at around 10 a.m.

18 Q And who was present?

19 A It was myself, Carolyn Carchidi -- that I remember --
20 Lorraine McAlister, Keith -- I don't remember his last name.
21 There were a couple other employees, but I don't know exactly
22 who.

23 JUDGE SANDRON: Do we have Lorraine's spelling in the
24 record?

25 MS. LANOUE: Lorraine is L-O-R-R-A-I-N-E

1 M-C-A-L-L-I-S-T-E-R (sic).

2 JUDGE SANDRON: Thank you.

3 Q BY MS. LANOUEETTE: And Ms. Cole, so the record is clear,
4 who is Lorraine McAlister?

5 A She is the director of rehabilitation services.

6 Q Why were you and Ms. Carchidi and -- and Ms. McAlister in
7 the conference room?

8 A We were starting a -- a daily department head meeting --
9 or management meeting, I believe.

10 Q What did you observe?

11 A Tara Golden entered the conference room quite
12 aggressively. She was waving something in her hand -- I can't
13 remember if it was a notebook or a piece of paper. And she
14 came over to Carolyn and I and started saying, this is why they
15 want a union, this is what I -- I found out. And she -- and
16 she was being very loud and -- and she just kept repeating
17 that. She was very -- you know, she seemed very, like,
18 animated -- very upset.

19 Q What, if anything -- did anyone respond to her?

20 A I -- it was met with shock, mostly. I remember, kind of,
21 being shocked, like, oh my -- oh my god. Lorraine McAlisker --
22 McAlister literally, like, put her head down in her arms.
23 And -- and Carolyn, you know, she just kind of, like, was
24 shocked that this was happening.

25 JUDGE SANDRON: Did anybody say anything?

1 THE WITNESS: Carolyn started speaking to her. I left the
2 conference room at that point.

3 JUDGE SANDRON: So -- so you didn't hear their con -- any
4 conversation they might have had.

5 THE WITNESS: I did not.

6 Q BY MS. LANOUEETTE: What did you do when you left the
7 conference room?

8 A I went and -- and reported it to my administrator, Patrick
9 Weir.

10 Q What did you and Mr. Weir do then?

11 A I don't remember exactly what I did. But I -- I seem to
12 believe that he went into the conference room at that point in
13 time.

14 JUDGE SANDRON: He -- did you go back in --

15 THE WITNESS: I --

16 JUDGE SANDRON: -- to the conference room?

17 THE WITNESS: I don't remember if I did.

18 Q BY MS. LANOUEETTE: Now, Ms. Cole, we've heard a number of
19 meetings that have taken place in the administrative conference
20 room. Could -- could you tell us what else happens in the
21 administrative conference room?

22 A Oh. Everything. We have parties there, family members
23 come to meet with their neigh -- prior to the pandemic,
24 obviously. Lunches are held there, court hearings are held
25 there, education. It's -- it's the largest conference room or

1 meeting room in the building, so it's frequently used. It's --
2 it's pretty much used every day -- at that point in time was
3 being used every day.

4 Q Who has access to the administrative conference room?

5 A Everybody.

6 Q And when you say everybody --

7 A Everybody that's a badge holder. So all employees. The
8 patients do not have access -- direct access.

9 MS. LANOUE: I have no other questions for this
10 witness.

11 JUDGE SANDRON: Cross examination, Ms. Pender?

12 MS. PENDER: Yes, Your Honor. Can we go off the record
13 for just five minutes while I prepare?

14 JUDGE SANDRON: Yes.

15 MS. TUMINARO: Can I ask if she provided a Jencks
16 statement?

17 MS. PENDER: Yes.

18 MS. TUMINARO: And can you send it maybe during our
19 recess?

20 MS. PENDER: Can I -- is that okay, Judge?

21 JUDGE SANDRON: Yes.

22 MS. JOSLIN: Can I second that request, please, Your
23 Honor?

24 JUDGE SANDRON: Can you just state on the record the
25 length and the date?

1 MS. PENDER: Yes. It is four pages, dated December 17th,
2 2019.

3 JUDGE SANDRON: All right. Why -- why don't we go off the
4 record for about 10 minutes if -- or we could -- it's about
5 10:27. We could go with -- come back at like, say, 10:45
6 So --

7 MS. PENDER: Good. Thank you, Judge.

8 JUDGE SANDRON: -- we'll go off for there.

9 MS. LANOUEETTE: Thank you, Your Honor.

10 JUDGE SANDRON: Talk to you then.

11 MS. LANOUEETTE: So Ms. Cole, I will just instruct not to
12 talk to me about your testimony while we are in recess.

13 THE WITNESS: Okay.

14 (Off the record at 10:45 a.m.)

15 JUDGE SANDRON: Okay. I think we're ready to -- then for
16 cross examination, Ms. Hammonds?

17 MS. HAMMONDS: I'm ready, Your Honor.

18 JUDGE SANDRON: Okay. Very good. Please proceed.

19 MS. PENDER: Are we on the record?

20 JUDGE SANDRON: Yes.

21 MS. PENDER: Okay. Thank you. Hi, good morning, Ms.
22 Cole. My name is Alicia Pender. I'm the attorney from the
23 NLRB and I just have a couple of questions for you. If you
24 can't hear me, let me know, okay?

25 THE WITNESS: Yes.

1 MS. PENDER: Okay. Thank you.

2 **CROSS-EXAMINATION**

3 Q BY MS. PENDER: You testified that part of what you do is
4 go on rounds and meet with staff and neighbors, right?

5 A Yes.

6 Q And is it in meeting with the neighbors that you develop
7 relationships with them?

8 A Yes.

9 Q And -- and it -- when you do this, you go on your rounds
10 and you meet with neighbors, -- will you, at those times, meet
11 with Patients J and R?

12 A Yes. I would meet with both of them on a regular basis.

13 Q Ms. Cole, are you a mandated reporter?

14 A Yes.

15 Q You didn't report Kathy Todd, did you?

16 A I reported her to the administrator.

17 Q Right. Do you have a role -- are you mandated to report
18 to the New York State Department of Health?

19 A No.

20 Q Is there someone in the facility who is?

21 A The administrator or nursing -- the nursing director.

22 Q You testified about an incident in a parking lot. Do you
23 recall that?

24 A Yes.

25 Q And you testified that there was a union organizer there

1 who you recognized because he was wearing an 1199 T-shirt.

2 A Yes.

3 Q There were also employees with the organizer, weren't
4 there?

5 A Yes.

6 MS. PENDER: I have nothing further, Your Honor.

7 JUDGE SANDRON: Okay. Ms. Tuminaro?

8 MS. TUMINARO: Let me -- just give me one minute. I'm not
9 sure if Ms. Joslin wants to go first.

10 JUDGE SANDRON: Either way. I -- I don't mind whichever
11 one of you wants to go first.

12 MS. JOSLIN: Your Honor, I have no questions.

13 **CROSS-EXAMINATION**

14 Q BY MS. TUMINARO: Miss -- Ms. Cole, you -- you mentioned
15 that you're a licensed CNA, correct?

16 A I'm a certified nurse's --

17 Q Certified. Sorry. I apologize. Certified nurse --
18 nursing assistant. I -- I -- and have you ever worked as a
19 CNA?

20 A Yes, I currently work as a CNA.

21 Q Okay. And you work as a CNA at Northeast?

22 A Sometimes. If need be, yes.

23 Q If they're -- if they're short staffed, for example?

24 A Correct. Or if I'm on -- out and about. Like I said
25 earlier, on my rounds, if a -- if a neighbor needed assistance

1 or a staff member asked for assistance, I would assist them.

2 Q And in the course of doing the rounds, how long have you
3 been doing the rounds, as you put it, in terms of walking
4 around the building and meeting with neighbors?

5 A Pretty much since I've been employed -- since the
6 beginning of my employment, March of 1999.

7 Q Okay. Very good. And how long have you -- how long have
8 neighbors J and R been at the facility?

9 A Resident Number 1, J, has been here probably, maybe three
10 years. R has been here quite a bit longer. She was actually a
11 patient here some time ago, was discharged and then was
12 readmitted to the facility. I want to say, probably about 10
13 years.

14 Q Okay. What do the CNAs at Northeast do? If you were
15 working full-time as a CNA, what would your duties be?

16 A My responsibilities would be to provide cares for the
17 neighbor: feeding, bathing, toileting, transportation to and
18 from rehab, you know, anything that would have to do with their
19 personal care needs.

20 Q And -- but the -- how many CNAs work on NRP4, if you
21 know?

22 A I do not know.

23 Q And how many neighbors are on NRP4 --

24 A Right now?

25 Q -- if you know? Well, in -- in fall of 2019, when you did

1 these interviews.

2 A I -- I wouldn't know the specific bed census, but it is a
3 40-bed unit.

4 Q Okay.

5 JUDGE SANDRON: Can -- could you give us a rough idea,
6 from you knowledge, of what the average number of patients is?
7 Or neighbors, you know, on -- on an average basis,
8 approximately?

9 THE WITNESS: For the facility, Your Honor?

10 JUDGE SANDRON: Well --

11 THE WITNESS: Or for that unit?

12 JUDGE SANDRON: -- for that unit.

13 THE WITNESS: That unit usually would be -- it would
14 usually be full, but it could fluctuate between 35 to 40
15 residents, depending on the census, discharges, and admissions.

16 JUDGE SANDRON: Okay. Thank you.

17 THE WITNESS: You're welcome.

18 Q BY MS. TUMINARO: And how many LPNs work on NRP4, if you
19 know?

20 A Could you be a little more specific because --

21 Q Well -- how -- in the fall of 2019, how many L -- LPNs
22 work on any given shift on NRP4 --

23 A I would --

24 Q -- if you know?

25 A I would say one LPN per shift.

1 MS. TUMINARO: I have nothing further.

2 JUDGE SANDRON: Redirect, Ms. Lanouette?

3 MS. LANOUEETTE: No, Your Honor.

4 JUDGE SANDRON: Okay. Well, thank you, Ms. Cole.

5 You're -- you're done. You're excused. So thank you for your
6 time.

7 THE WITNESS: Thank you.

8 MS. LANOUEETTE: You can just -- yeah, there you go. At
9 this time, Respondent rests.

10 JUDGE SANDRON: Is there any rebuttal from the General
11 Counsel or either of the charging parties?

12 MS. PENDER: Not from the General Counsel, Your Honor.

13 JUDGE SANDRON: Ms. Tuminaro?

14 MS. TUMINARO: Not from the charging party Union, Your
15 Honor.

16 JUDGE SANDRON: And Ms. Joslin, anything further?

17 MS. JOSLIN: No, Your Honor. Not on behalf of Tara
18 Golden. Thank you.

19 JUDGE SANDRON: All right. Well, I think that then,
20 we've -- we've concluded the evidentiary portion of -- leaving
21 aside the matter of the documents. I think, as -- as we
22 discussed, yesterday at -- I think that was off the record but
23 I -- I'll put it on the record.

24 I -- I think we discussed that, Ms. Lanouette, you had
25 numerous documents and you're not at your office now and you

1 indicated that you need a couple of days to get them into
2 proper format, as far as pagination. And I indicated that I --
3 that you -- I would give you some time. And I think you said
4 that you thought a couple days would be enough.

5 So I'll set close of business Tuesday of February 2nd for
6 you to file those documents with the court reporter in the
7 proper form. And -- and as I indicated, what I'll do on
8 Wednesday is issue an order closing the record and scheduling a
9 due date for the filing of briefs. I think, as I said, I -- I
10 have -- I'm limited to 35 calendar days at the outset. So
11 I'll -- I'll set Wednesday, March 10th as the due date for the
12 briefs.

13 And as all of you are probably aware, there is a procedure
14 to request a -- an extension of time and that's with Deputy
15 Chief Judge Arthur Amchan, A-M-C-H-A-N, in Washington. And
16 you -- you -- the procedure is to request as short an extension
17 as you think is appropriate and also get the position of
18 opposing counsels as to whether they will join in or object to
19 the postponement. As a general rule, if -- if there's
20 reasonable cause and it's the first request, usually they are
21 granted as far as additional time to file the briefs.

22 When the briefs are filed, I think it would be helpful
23 to -- to break it down. Credibility is obviously going to be
24 very important in -- in determining the allegations of this
25 case. So I think the best way to structure the briefs would be

1 to deal first with credibility and then, based on the
2 credibility, the facts that you want me to find, and then an
3 analysis of the law based on those facts.

4 So I would like to -- at this moment to thank the parties
5 for their general cooperation throughout the course of the
6 trial. I realize there were a lot of documents, a lot of
7 witnesses, and we had several Zoom issues. So I -- I -- I
8 think that the parties' ability to cooperate in -- in the -- in
9 the proceedings made it a lot more smooth than it would have
10 been otherwise. And also --

11 MS. TUMINARO: Your --

12 JUDGE SANDRON: Yes?

13 MS. TUMINARO: I just had a couple of quick questions, but
14 I didn't want to cut you off. Please finish.

15 JUDGE SANDRON: Oh. Well, I was also going to thank our
16 very able court reporter, Thomas Baker, and our deputy court --
17 deputy, Ashley Hammonds. So -- they -- thank you very much,
18 Ms. Hammonds. You've made it possible to conduct this hearing
19 and -- and finish within the four-plus days. Otherwise, I
20 think we would have had a lot of issues in terms of getting all
21 the evidence in. So thank you.

22 Ms. Tuminaro, you had a couple of questions?

23 MS. TUMINARO: I just had a couple of quick questions.
24 One is -- and I just can't recall because it's been a number of
25 years. Is there a procedure we should request for the

1 expedited court reporting transcript? Do we do that today? Or
2 do I need to send a written request? And if so, should I send
3 it by email to Mr. Baker?

4 JUDGE SANDRON: Maybe Mr. Baker can -- or Ms. Pender can
5 answer that because I don't deal directly with that.

6 MS. PENDER: I would just ask Mr. Baker. I don't -- I
7 also don't know. I know if we were in person, I would say, go
8 ask the court reporter.

9 MS. TUMINARO: Well, often you get the business card
10 but --

11 MS. PENDER: Yes.

12 MS. TUMINARO: -- it's harder here.

13 JUDGE SANDRON: Mr. Baker, do you know the --

14 MS. PENDER: Oh. We can't hear you, Mr. Baker

15 JUDGE SANDRON: Oh.

16 MS. PENDER: No, we can't hear you.

17 MS. TUMINARO: It's on mute.

18 JUDGE SANDRON: Oh.

19 MS. JOSLIN: No, he's not muted.

20 MS. PENDER: Well, he muted --

21 THE COURT REPORTER: No, I'm not on -- it's okay. I --
22 I'll go on the phone. Yeah, I have a form that I can send you
23 for that.

24 MS. TUMINARO: Okay. Great. That would be wonderful.

25 THE COURT REPORTER: So I --

1 MS. TUMINARO: And -- and -- and then next the next
2 question --

3 THE COURT REPORTER: If you just want to reach out to me
4 with your email address, you just send me an email and then
5 I'll -- I'll send the form back to you.

6 MS. TUMINARO: Then my -- my next question was I have
7 uploaded everything to SharePoint, and I have -- I have shared
8 copies of the Union's exhibits with Counsel but I realize in
9 looking at Ms. Pender's email this morning, where she sent the
10 exhibits also to the Judge and to Mr. Baker and Ms. Hammonds,
11 that maybe I should have emailed them as well. So I -- is it
12 sufficient if it's all in SharePoint or should I send you --
13 Mr. Baker and Ms. Hammonds and the -- and Your Honor -- should
14 I send an email with the attachments?

15 JUDGE SANDRON: Well -- well, Mr. Baker can answer but
16 I -- I think the main thing is to get it in -- into the formal
17 exhibits because they will be filed, like, in our -- our in --
18 internal system NextGen. They will be in there. So I think
19 the main thing is -- is for Mr. Baker to get them. I think
20 everybody has seen the documents already. I don't think you
21 need to send them again. But maybe Mr. Baker --

22 THE COURT REPORTER: I -- I would need to be emailed a
23 copy.

24 MS. TUMINARO: Okay. So I will just email you a copy of
25 the charging party's exhibits that I uploaded to SharePoint.

1 THE COURT REPORTER: Very good.

2 MS. TUMINARO: And I -- and in that email, I'll -- I'll
3 send you my address so you can send me the form for the
4 transcript.

5 THE COURT REPORTER: Excellent. And can we maybe take a
6 moment and go over the exhibits because I know not everything
7 was received.

8 JUDGE SANDRON: All right. That's probably a good idea.
9 Why don't we --

10 THE COURT REPORTER: You want to go off the record for
11 that? Or you want to go on the record?

12 JUDGE SANDRON: Well, I don't know if -- maybe we can do
13 that off the record --

14 THE COURT REPORTER: Okay.

15 JUDGE SANDRON: -- I think. And then the parties can
16 confirm. And -- and then -- well, maybe -- maybe we should do
17 that before -- well, we're not going to close the record today
18 but -- why don't we just go off the record for a few minutes
19 and the parties can confirm with Mr. Baker so we -- we don't
20 have anything left hanging. So we'll just go off the record
21 for a few minutes. Okay. We're off the record.

22 (Off the record at 11:07 a.m.)

23 JUDGE SANDRON: Okay. I -- I think we can go back on --
24 back on the record. We had a discussion of the documents that
25 had been made part of the record. And -- and just to confirm

1 it, I admitted Respondent's Exhibits 11 and 40.

2 **(Respondent Exhibit Number 11 Received into Evidence)**

3 JUDGE SANDRON: And I understand, Ms. Lanouette, you --
4 you wish to offer a document marked as Respondent's Exhibit 56?

5 MS. LANOUEETTE: Yes, Your Honor.

6 JUDGE SANDRON: And -- and that document was -- is -- was
7 that already shown or -- or identified earlier? 56?

8 MS. LANOUEETTE: I am uncertain if it was. I thought it
9 was but there was some discussion that perhaps it was not.

10 JUDGE SANDRON: But -- but all parties know the document
11 to which Counsel is referring?

12 MS. PENDER: Yes. We all have it.

13 JUDGE SANDRON: And Ms. Tuminaro and Ms. Joslin?

14 MS. TUMINARO Yes, that's correct, Judge.

15 MS. JOSLIN: Yeah.

16 JUDGE SANDRON: Okay. Are there any objections to that
17 document?

18 MS. PENDER: No.

19 MS. TUMINARO No objection.

20 MS. JOSLIN: No objection.

21 JUDGE SANDRON: All right. The document is received.

22 **(Respondent Exhibit Number 56 Received into Evidence)**

23 JUDGE SANDRON: So I think we have covered all of the
24 documents. Is there anything else from any of the counsels
25 before we go off the record for today? And as I said, I expect

1 to issue an order next Wednesday closing the record and
2 formally setting the date for the filing of briefs.

3 MS. PENDER: There's nothing from the General Counsel
4 other -- other than just to say thank you to everybody for your
5 participation and cooperation.

6 JUDGE SANDRON: And Ms. Lanouette, anything else?

7 MS. LANOUEITE: No, Your Honor.

8 JUDGE SANDRON: And Ms. Tuminaro?

9 MS. TUMINARO No. I want to thank everyone for their
10 courtesy and trying to deal with the technology. I especially
11 had a lot of difficulty with SharePoint and Counsel, you know,
12 was -- was -- everyone was very helpful in making sure I had
13 whatever documents were small enough to email. Thank you.

14 JUDGE SANDRON: And Ms. Joslin, anything else?

15 MS. JOSLIN: No, Your Honor, other than to extend my
16 thanks to all of you. It's been --

17 JUDGE SANDRON: All right.

18 MS. JOSLIN: It's been --

19 JUDGE SANDRON: Well, I --

20 MS. JOSLIN: -- an incredible experience.

21 JUDGE SANDRON: Again, thanks. I repeat what's been said
22 and what I said earlier about the cooperation that was
23 demonstrated by Counsels and I'll look forward to receiving
24 your briefs. And I -- I wish everyone stay well and maybe at
25 some point we'll have -- be able to have an in-person trial.

1 But I think we did very well under the circumstances. Would --
2 so -- so everybody take care and we'll go off the record.

3 MS. PENDER: Thank you.

4 MS. LANOUE: Thank you.

5 MS. TUMINARO Thank you.

6 JUDGE SANDRON: Bye now.

7 (Whereupon, the hearing in the above-entitled matter was closed
8 at 11:10 a.m.)

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C E R T I F I C A T I O N

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 3, Case Numbers 03-CA-252090, 03-CA-254186, 03-CA-255155, NCRNC, LLC D/B/A Northeast Center for Rehabilitation and Brain Injury and 1199 SEIU United Healthcare Workers East and Tara Golden, held at the National Labor Relations Board, Region 3, 11A Clinton Avenue, Albany, New York 12207, on January 29, 2021, at 10:06 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.

Thomas Baker

THOMAS BAKER

Official Reporter

